

FLOOR DELIBERATIONS AND SCHEDULING

Y 4.3:OR 3/D 37

Floor Deliberations and Scheduling,...

HEARINGS

BEFORE THE

JOINT COMMITTEE ON THE ORGANIZATION OF CONGRESS

ONE HUNDRED THIRD CONGRESS

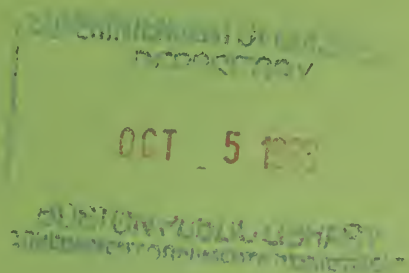
FIRST SESSION

FLOOR DELIBERATIONS AND SCHEDULING

MAY 18, 20, and 25, 1993



Printed for the use of the Joint Committee on the Organization of Congress



FLOOR DELIBERATIONS AND SCHEDULING

HEARINGS
BEFORE THE
JOINT COMMITTEE ON THE
ORGANIZATION OF CONGRESS
ONE HUNDRED THIRD CONGRESS
FIRST SESSION
FLOOR DELIBERATIONS AND SCHEDULING

MAY 18, 20, and 25, 1993



Printed for the use of the Joint Committee on the Organization of Congress

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1993

69-801-

For sale by the U.S. Government Printing Office
Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328
ISBN 0-16-041249-8

JOINT COMMITTEE ON THE ORGANIZATION OF CONGRESS

[Authorized by H. Con. Res. 192, 102d Congress]

SENATE

DAVID L. BOREN, Oklahoma, *Co-Chairman*
PETE V. DOMENICI, New Mexico, *Co-Vice Chairman*

JIM SASSER, Tennessee	NANCY L. KASSEBAUM, Kansas
WENDELL H. FORD, Kentucky	TRENT LOTT, Mississippi
HARRY REID, Nevada	TED STEVENS, Alaska
PAUL S. SARBANES, Maryland	WILLIAM S. COHEN, Maine
DAVID PRYOR, Arkansas	RICHARD G. LUGAR, Indiana

GEORGE J. MITCHELL, Maine, *Ex Officio*
ROBERT DOLE, Kansas, *Ex Officio*

HOUSE OF REPRESENTATIVES

LEE H. HAMILTON, Indiana, *Co-Chairman*
DAVID DREIER, California, *Co-Vice Chairman*

DAVID OBEY, Wisconsin	ROBERT S. WALKER, Pennsylvania
AL SWIFT, Washington	GERALD B.H. SOLOMON, New York
SAM GEJDENSON, Connecticut	BILL EMERSON, Missouri
JOHN M. SPRATT, Jr., South Carolina	WAYNE ALLARD, Colorado
ELEANOR HOLMES NORTON, D.C.	JENNIFER DUNN, Washington

RICHARD A. GEPHARDT, Missouri, *Ex Officio*
ROBERT H. MICHEL, Illinois, *Ex Officio*

G. KIM WINCUP, *Staff Director*
WALTER OLESZEK, *Policy Director*
KELLY L. CORDES, *Chief Clerk*
JOHN F. DEEKEN, *Professional Staff Member*
C. LAWRENCE EVANS, *Professional Staff Member*
PHILIP W. GRONE, *Professional Staff Member*
NICHOLAS P. WISE, *Professional Staff Member*
MAUREEN GROPPÉ, *Press Secretary*
CAROL HARDY VINCENT, *CRS Policy Analyst*
PAUL RUNDQUIST, *CRS Policy Analyst*
MARY LOU SMULLEN, *Special Assistant*
SHELLEY GOUGH, *Staff Assistant*
STACEY SPEVAK, *Staff Assistant*
MARION MILLHOUSE, *Staff Assistant*
DIANNE LAMBERT, *NASA Detailee*

CONTENTS

MAY 18, 1993

	Page
WITNESSES	
William H. Brown, House Parliamentarian	1
Prepared statement	150
Alan Frumin, Senate Parliamentarian	4
Lloyd Cutler, Counsel to President Carter	20
Prepared statement	163
Hyde Murray, Former Counsel to the House Minority Leader	38
Prepared statement	176
Pete Robinson, Former Assistant House Parliamentarian and Former Staff Director to the House Democratic Steering and Policy Committee	41
Bill Hildenbrand, Former Secretary of the Senate	43
Prepared statement	186
Murray Zweben, Former Parliamentarian of the Senate	44

MAY 20, 1993

WITNESSES	
Hon. John Joseph Moakley, Chairman, House Rules Committee, a U.S. Representative from Massachusetts	59
Prepared statement	188
Hon. David Dreier, a U.S. Representative from California	75
Prepared statement	196
Hon. Lincoln Diaz-Balart, a U.S. Representative from Florida	88
Prepared statement	210
Hon. Deborah Pryce, a U.S. Representative from Ohio	89
Prepared statement	205
Barbara Sinclair, Professor, University of California at Riverside	93
Prepared statement	238
Steven Smith, Professor, University of Minnesota	96
Prepared statement	213

MAY 25, 1993

WITNESSES	
Hon. David Dreier, a U.S. Representative from California	109
Hon. Bill Emerson, a U.S. Representative from Missouri	109
Prepared statement	248
Hon. James Exon, a U.S. Senator from Nebraska	119

IV

	Page
Prepared statement	251
Hon. David Pryor, a U.S. Senator from Arkansas	125
Prepared statement	262
Chart on the number of Hours in Session and number of votes	272
Hon. William Tauzin, a U.S. Representative from Louisiana.....	135
Hon. Tom Harkin, a U.S. Senator from Iowa.....	144
Prepared statement	273

APPENDIX

Hon. Steny H. Hoyer, prepared statement submitted for the Record	275
--	-----

FLOOR DELIBERATIONS AND SCHEDULING

TUESDAY, MAY 18, 1993

UNITED STATES CONGRESS,
JOINT COMMITTEE ON THE ORGANIZATION OF CONGRESS,
Washington, DC.

The committee met, pursuant to call, at 2 p.m., in room HC-5, The Capitol, Senator David L. Boren (chairman of the committee) presiding.

Mr. DREIER (presiding). The committee will come to order.

We are pleased to have Mr. William Brown and Mr. Alan Frumin, House and Senate Parliamentarians respectively. Mr. Brown came to the House as Assistant Parliamentarian to the House of Representatives in 1958 and was later appointed Parliamentarian in 1974.

Mr. Frumin was a student of this committee's policy director Al Colgate before becoming Second Assistant Parliamentarian in the Senate in 1977. Subsequently, he became Assistant Parliamentarian in 1981 and was appointed Parliamentarian in 1987.

We are very pleased that both of you have joined us. We look forward to your testimony. You can proceed in whatever order you would like.

Mr. Brown?

STATEMENT OF WILLIAM H. BROWN, PARLIAMENTARIAN, U.S. HOUSE OF REPRESENTATIVES

Mr. BROWN. Mr. Chairman, Mr. Vice Chairman and Members of the committee, 1958 seems like a long time ago. And I was struck by that this morning when I picked up the rule book from 1958, when I started, and compared it to the rule book of today. A lot has gone under the bridge in those 35 years.

The new edition for the 103d Congress is at the printer at the moment. I hate to tell you but it is bigger than this. We pick up pages of precedents and rules every year.

Our invitation from the committee asked that we might address two topics, since we are sort of bridging the gap between your jurisdictional hearings and the hearings that will go on to the Floor procedure. The first was the evolution of the referral process.

In 1958, referrals were relatively simple. You read a bill, and you decided which committee had the predominance of jurisdiction. If you saw the words "Internal Revenue Code", it was referred to the Ways and Means Committee, regardless of whether that reference was a minute part of the bill. All tax matters went to Ways and Means, no other committee.

But there were a lot of bills in those days. In the 85th Congress, there were over 18,000 bills to read and refer. So it was a time-consuming job. It still is, although rules reforms since 1958 have allowed us to reduce the number of introduced bills. Cosponsorship on the House side has allowed Members to join in sponsorship. So the workload has been—the paperwork load—has been reduced by about half, from 15,000 or 16,000 bills to 7 or 8. But of course the referral process has gotten more complicated.

In 1958, joint referrals, sequential referrals, language of that sort, were not in our vocabulary. The only concept of joint referral which existed in 1958 was when Public Works and the Ways and Means Committees would get together on a highway bill and they would have Title I, setting forth the authorizations for new construction, and Title II, which would open up the trust fund to finance that new construction. That was really the only concept of a joint referral. And both Public Works and Ways and Means would report, and the Rules Committee would put them together in a package for Floor consideration.

Along came the committee reform amendments of 1974, and, as you all know, and I don't have to repeat this, there was a concentrated effort at that time to reform committee jurisdiction. In the Bolling recommendations, there were some rather innovative groupings of committee topics. When that measure reached the Floor, there was, as you know, a fight led by two prominent Members of the House, and the committee jurisdiction part of the Bolling resolution was largely stripped out and replaced with something much more akin to what existed at that time, and what we have today.

And so overlaps in jurisdiction were not eliminated. But in the back part of the resolution—four titles removed from those provisions that addressed committee jurisdiction—remained the authority for the Speaker to refer bills to more than one committee.

Now, it is almost as if the multiple referral part was ignored when they changed the committee jurisdiction features, because I think the Bolling concept was that the committees would be so tightly defined and jurisdictions so well separated that there would be very few multiple referrals, and what few there were would be rather easily dealt with by the Speaker's referral authority.

But as it turned out in 1974, in the 94th Congress, we began working with that mandate to the Speaker—that he shall refer bills to all committees having jurisdiction—on top of a referral pattern or a jurisdictional pattern that was not that neat.

At first we tried to minimize the number of committees that we would put on the endorsement of a bill acting under the theory: why complicate the committee process, why complicate the workload, let's keep it simple. If committees B, C and D want part of the bill after committee A reports, let them ask for it, while A is marking up.

But committees quickly learned that they had jurisdictional claims in measures, and they began to write the Speaker letters, and the volume of letters from committee chairmen grew and grew, and so we had to begin to monitor those letters. The Speaker would give them to us—letters complaining that a bill had been referred without regard to a committee's jurisdiction. That file grew,

as I said. And committees became very aggressive in seeking to make their mark on as many pieces of legislation as they could.

And so we began to get letters from various committees saying, "Whenever a bill comes in in the future that hits on these topics, we want it to be referred to us *ab initio*, from the beginning." As Congresses have gone on, those patterns have been repeated.

You have statistics before you provided by another witness that the number of joint referrals, 6 percent of the total, is now up to 20 percent or more.

Now, there are many more in that 80 percent that are not jointly referred but that could be jointly referred if we were to step over the line and decide that certain provisions are no longer *de minimis*, but we have resisted putting more committees on a bill than necessary.

Whether it has complicated the process for committees, that is up to the committees themselves to tell you. I don't know. The House has mechanisms to bring matters before it and to fulfill its agenda whether or not all committees on the bill have reported, as you know. The Rules Committee can discharge. There is the suspension authority.

A good bit of comity has been developed by committees where committee B will write to committee A and say, "You have got that provision under our jurisdiction in your bill; we are not going to insist on a referral if you will modify it to meet our request." And we have tried to facilitate that type of negotiation between committees. I think it is working to some extent.

So that is how the referral process has evolved. The Speaker has a great deal of authority under Rule 10 to make imaginative referrals when he wants to do so.

I think my office believes Rule 10 has a lot of flexibility built into it, but it is difficult to use it because to tailor a referral to fit a specific bill takes a lot of time. "When do you want this bill to come to the Floor," the Speaker would have to ask. The Speaker has power to put a time limit on bills: "If he wanted, he could tailor his referral and negotiate the referral of a bill before the committee process so that it would come to the Floor at the proper time in the agenda; but it would take a lot of time to make those individual decisions on every bill. The Speaker has done it—Speakers have done it on rare occasions.

Where we were facing an adjournment and the leadership wanted to be sure an introduced bill got to the Floor before adjournment, the Speaker put time limits on those referrals. So the mechanisms are there. But they are difficult to use without involving the Speaker in a lot of agenda setting, which he does not have time for, I would say.

The second topic which you asked us to think about were issues involved in the deliberative process. That is sort of an open book question. If I were to be given an exam, I would like to have a blue book to write on that.

But we are not advocates in our office. The Parliamentarians will take a rule and will try to act as lawyers and understand it and explain it, and even suggest where it is flawed. But we don't view ourselves as proponents of this rules change or that revision.

There are obviously pressures on the timetable of the House, the committee process has its timetable, and there are pressures on individual Members. And how you put together a rules package or a reform package that resolves those conflicts is a tough job which you all face.

There are various mixes of rules which could accomplish that, and you have to set your goals, it seems to me. What are your goals here? And then devise a proper mixture of rules.

There are minority employees in this room that know that we will work with both sides of the aisle, as nonpartisan employees of the House, to craft rules that will fit your agenda, the minority and majority, the House or anyone. We will be glad to discuss those changes on a more personal basis.

I would like to make two final points. One: I think the House would work better if more Members understood the rules of the House well. We stand ready to help with orientation of new Members or education of sitting Members or staff at any level that the joint leadership of the Congress wants us to. I think that Members need to become more familiar with the process.

And second, all of us in the Parliamentarian's Office on the House side feel that an idea that was first floated, I guess, in the 99th or the 100th Congress about codifying the rules of the House is a good idea. It is time to revisit it. There are anachronisms and conflicting definitions in these rules. They could be codified. That could be part of your recommendation. We think it is a good idea and we would be willing to go forward with that.

I will turn in my testimony, which amplifies on what I have said.

Mr. DREIER. Without objection, it will be put in the record.

[The prepared statement of Mr. Brown is printed in the Appendix.]

Mr. DREIER. Mr. Frumin?

STATEMENT OF ALAN FRUMIN, PARLIAMENTARIAN, U.S. SENATE

Mr. FRUMIN. I would like to add one anecdotal word about my congressional service. When I was hired in 1977 to work for the Senate, it was based on my experience in working for the House of Representatives. I worked on setting precedents in the House of Representatives from 1974 until 1977. I was hired based on that knowledge and experience. And then on the first day I came to work in the Senate, I was told to forget everything I knew about the House. It was impressed upon me from the beginning that the Senate and the House were different. And I have been impressed with that fact during my entire tenure in the Senate.

I believe the mandate of your committee is quite daunting, to try to bring about some coherent, meaningful changes in the way in which Congress does its business. As we all know, there is no Congress per se. There is the House and there is the Senate.

I have tried in my work in the Senate to understand the differences between the House and the Senate when they are relevant to the proper functioning of the Senate. And I have tried in my discussions with Members of the Senate and their staff to bring to their deliberations my understanding as to how the two Houses are

intended to function and how the Senate is unique and how the Senate's precedents are unique.

As I said, your committee has a truly enormous responsibility. I urge you in your deliberations to continue to appreciate the distinctions between the two bodies in the recommendations that you do make.

With respect to the specific questions mentioned in your letter, the Senate does not have the same practice that the House has with respect to multiple referrals. Under our rules, the presiding officer is responsible for referring proposed legislation to the one committee that has jurisdiction over the subject matter that predominates in that piece of legislation.

What this means is that when we read a particular bill or resolution, we have to choose one committee and one committee only. There are times when I call Bill and say, I would love to have the authority that the Speaker and the Parliamentarian has on the House side to refer measures to more than one committee. It would make my life a lot easier. Whenever I say that, Bill kind of chuckles and says, "You don't want it."

When I came to the Senate in 1977, I was told that joint referrals occurred quite frequently and that they did occur by unanimous consent, and that was the only way they did in fact occur.

At the beginning of 1977, the Stevenson committee reported its recommendations to the Senate. Those recommendations were adopted by the Senate in February 1977. They were intended, among other things, to simplify and consolidate the jurisdictions of various committees.

In addition to that, that resolution authorized a motion to be made by the Majority and Minority Leaders of the Senate or their designees to provide for a joint or sequential referral on a piece of legislation. The motion was to be privileged; it was to be subject to 2 hours of debate. A limited number of amendments would be in order to this motion.

In this way, the Senate was attempting to provide for a motion to accomplish a joint or sequential referral. Previously, these referrals occurred only by unanimous consent.

A curious thing has happened, although I don't have statistics; my evidence is simply based on my observations. The incidence of multiple referrals has dropped tremendously since the motion was authorized by the Senate's rules to provide just such referrals.

I can think of no example where the motion in order by the two Leaders has been used to jointly or sequentially refer a measure to more than one committee. When Senators and staff come to my office and say; "This is what we will want to do with a particular piece of legislation, this is how we would like it to be drafted; could you tell us the committee you would like it to be referred to?" We give them an answer. When they are dissatisfied with that answer, they talk about changes in drafting and invariably the questions come around to whether or not a multiple referral, a joint, or sequential referral could be obtained.

I tell the Senators and their staff that it requires unanimous consent. And then I say, the standing rules authorize a motion, but it has never been used. And we leave it go at that. The motion is on the books, but I have never seen the motion for multiple referrals

used. We do have a few standing orders of the Senate that carry over from one Congress to the next, that provide for a multiple referral for particular classes of legislation.

The most obvious cases for us are measures that amend the Congressional Budget Act of 1974 or otherwise affect the congressional budget process. We have a standing order dating back to August 1977 that provides for a joint referral of such measures to both the Senate Committees on Governmental Affairs, and the Budget.

We have obtained in recent years similar types of standing orders with respect to measures authorizing appropriations for the National Science Foundation, another standing order with respect to measures dealing with Indian housing.

However, these standing orders are the exception. They are not the norm. The net result is that we see very little in the way of multiple referrals in the Senate.

With respect to the other question on the deliberative process, as Bill says, that is an open book. To a certain extent that book was written and continues to be written on the Senate side of the Rotunda.

I will echo what Bill said in terms of the Parliamentarians not being advocates for a particular position. I am not and I cannot be an advocate with respect to certain changes that the committee might recommend with respect to the deliberative process. I note that one Senator's abuse is another Senator's sacred right. At least that is how the various Senators construe that which one labels an abuse.

I am willing and eager to comment on recommendations that the committee might have or might be considering with respect to changes in the Senate's rules as it affects the deliberative process. But of course I cannot be an advocate for any one particular change or for that matter for a set of changes.

Chairman BOREN. (presiding.) Thank you very much, Mr. Vice Chairman, for beginning these proceedings.

I want to thank both of our Parliamentarians for being present.

As best we can determine this is the first time that the Senate Parliamentarian and the House Parliamentarian have testified before a committee at the same time. The appearance, I know, of two Parliamentarians before Committee are very rare. We do know the House Parliamentarian testified in 1945 before the first joint committee upon which we are patterned.

I don't believe we have documented in the historical record that the Senate Parliamentarian has testified before a committee of this kind. I ask the Senate Parliamentarian, is this your first appearance before a Senate panel?

Mr. FRUMIN. Yes.

Chairman BOREN. As far as we can determine, it may be the first appearance ever by the Parliamentarian of the Senate. So this is also an historical occasion.

We have so many questions to address, whether or not the norms particularly in the Senate have deteriorated to such a degree that individual Senators feel no reluctance at all in holding up the operations of the body for policy or for personal reasons. So we are trying here to find a way to restore balance between the rights of individuals and the need of the institution to function.

One of the things that I seem to observe, and when we get into questions, when it comes my turn I am come back to this point, as to whether or not the self-restraint that perhaps was practiced by Members in earlier periods is beginning to break down, so that rules that functioned one way in an historic era may not function the same way in another.

The use of the filibuster, for example, seems to have escalated greatly in the last 15 years compared to the historical record in the Senate.

Second, several Senators have left the Senate frustrated because of the way we schedule our business on the Floor. It is very difficult for them to balance committee business with Floor activity, because often we do allow committees to continue to meet, very often, while the Senate is in session.

Also, an impossibility of scheduling time. We never know exactly what time of day we will start or what time of day we will finish. We don't know when we will start sometimes until late the night before, and we rarely if ever know exactly what time we will finish. So there is no regularity of hours or predictability.

Finally, whether or not the rules that we now have really encourage the fragmentation and splintering we seem to see in the political process in the country, at a time when we need to come together with more and more consensus on serious national problems. We seem to have more partisanship, more fragmentation, more groups, more small groups in each House that split apart, and it makes it more and more difficult to do our job.

So I just want to express my appreciation to both of you for being part of this process today. We understand that by the nature of the work each of you performs, that it isn't appropriate for you to become advocates of a particular point of view. Of all the officers of the House and Senate, you were meant to be the impartial arbiters of what the rules are, and to help with the fair application of those rules. So we understand the situation. But your technical knowledge is of great benefit to us.

I just want to express my personal appreciation on behalf of all the Members of this committee for your being a part of these historic hearings.

I will ask my questions at the end.

Mr. Emerson was the first in attendance today.

Mr. EMERSON. Thank you, Mr. Chairman.

I would like to ask both of you, I understand your point about not being able to be advocates for any particular point of view, but I wonder if as a matter of objectivity, from your long involvement in working with the procedures of the respective bodies, if indeed you do have some broad recommendations that you would like to make to this committee, perhaps in writing, just for the smoother flow of business, how things might just work better. Not necessarily advocating anything, but does something in particular come to your mind as to what would make the flow of business easier and fairer? Is there something that bothers you about the rules of either body?

Mr. BROWN. Well, if I may respond in part, you talk about the fairness of procedure. That really—gets to the very point that is difficult for us to address. I think it is accurate to say we do not

look at the standing rules or the rules of the House and Senate as being fair or unfair. As Alan said, they are fair or not in the eye of the beholder.

Our concept of fairness is in trying to interpret what is on the books predictably and in accordance with precedent. That is what we consider to be fair. If everybody has a level playing field in the use of a rule and the interpretation of a rule, that is the climate we would like to foster. That is the environment we would like to foster. That is what we mean by fairness and that is what we work toward.

I think all the rules have to have a balance, and I think we always have to remember that there is a balance to the rules of the House. Sometimes it is difficult to see it, but I think if looked at as a whole from a distance, there are rules that allow almost everyone to do what they want to do.

I have spent a lot of time, and so has Alan, over the last 2 years talking to delegations from all these newly emerging Republics in the Soviet Union and Europe. And they are enamored of our rules. They want to emulate them in many places. So there is something to be proud of in the structure that we have built.

Mr. FRUMIN. Congressman, you asked if there are suggestions that can be made to improve the efficiency of the working of the Congress. And again, I will try not to tread there.

Mr. EMERSON. I used the word "efficiency" loosely. A smoother flow, a fairer flow.

Mr. FRUMIN. Well, again, I echo what Bill Brown just said, that our responsibility is to see that the playing field is level, and that the rules and the precedents that have been established are interpreted evenly for all interested parties. That is the best we can do.

In terms of efficiency, again, I don't think on the Senate side there is a consensus that what the body needs is greater efficiency. I think there would be quite a cry from the minority against measures whose stated objective was to increase the Senate's efficiency.

Mr. EMERSON. Thank you. I see my time has expired.

Chairman BOREN. Thank you very much, Mr. Emerson.

Mr. Allard?

Mr. ALLARD. Thank you, Mr. Chairman.

The founders of our Constitution had a decided role for the minority point of view. And I think that was provided for in the Constitution and a lot of the rules of the House, that was provided for.

For example, James Madison consistently made a statement about tyranny by the majority. He was trying to get a balance between majority and minority rule.

What type of things could go on in the House as far as rule changes that would improve the voice of the minority?

Mr. BROWN. That is a difficult one.

Mr. ALLARD. Let me help you along a little bit.

Mr. BROWN. I appreciate that.

Mr. ALLARD. What about amendments, for example? We have a lot of restrictions on amendments on the Floor of the House. We have time limits on how long individual Members can speak. And those not only affect the minority party but they also affect the majority party.

And there were certain provisions there to ensure the minority would have an opportunity—there are minority reports that come out of the committee, for example, where they have an opportunity to express their point of view. So having elaborated a little more on that question, maybe you can follow up from there.

Mr. BROWN. I think I can say in a nonpartisan way, that on both sides of the aisle of the House I discern a desire for more meaningful debate. I think that is a bipartisan goal.

Mr. ALLARD. I would agree with that.

Mr. BROWN. And I believe that spontaneity in debate, more time for debate, and debate that is more focused on the issues could be fostered, perhaps by the use of special rules from the Rules Committee—we have done it on the Armed Services bill, as you know, where you put the debate on the B-1 before the amendment process on the B-1. That seems to me to be a useful juxtaposition of debate time and gives everyone a chance to express themselves before the vote comes.

There have been proposals for some free time for debate that is not controlled by committees, following a rule that says, for instance, that an amendment should be debated one hour, time divided by the Chairman and Ranking Member. You might have a period of 5-minute debate that is not controlled.

There are various combinations of mechanisms which are available to the House now, which I think could be used.

Mr. ALLARD. I would very much like to pursue this questioning, but I see my time has passed. Maybe we can go into it a little later.

Thank you.

Chairman BOREN. Thank you very much.

Mr. Spratt?

Mr. SPRATT. Just pick up on that, Mr. Brown, one of the ideas proposed by Ornstein and Mann is that we have ethic debates, so to speak, debates from time to time like the Persian Gulf debate we had in the House on major topics, health care or whatever it might be. We sort of set this aside as a national learn-in. We are on C-SPAN and we are devoted to a debate where different positions in the House could thoroughly air. What do you think of the efficacy of that idea?

Mr. BROWN. I think the Members would respond to that type of initiative. I believe they would put on a good educational show. I think the House would respond to that.

There have been other suggestions that are of that same type, and that is to restructure, perhaps, the format of the House so that the 1-minute period is not at the beginning of the day. There are various mixes of special orders, one minutes, and the essential legislative business that could be perhaps interrelated in ways we don't use today.

I think the American public would benefit greatly by such a topical debate. And I think as far as the image of the House goes, I think that probably would be a good thing.

Mr. SPRATT. Mr. Frumin?

Mr. FRUMIN. Well, the Senate's rules and precedents permit fairly unlimited debate both in terms of subject matter and in terms of length. So I don't believe there is any change necessary in our rules in this respect.

When Senators are confronted with issues of monumental national and international importance, generally they do not find themselves constrained when they come to the Floor of the Senate in being able to initiate or participate in debate of that nature.

Mr. SPRATT. Mr. Brown, I did not hear your testimony—and I am sorry for that, but you may have addressed this in your testimony or your earlier responses. One of the recommendations made to us is that in dealing with committee structure, at the very least we deal with overlapping jurisdiction, sometimes redundant jurisdiction.

Is this frequently a problem in referral of legislation and getting bills reported in a timely manner to the Floor?

Mr. BROWN. Mr. Spratt, you have to remember that the rules on jurisdiction in Rule 10 have started back in—in the early days, and some of the words and phrases used in those jurisdictional assignments are archaic, and some topics—I mention insurance—are not mentioned in Rule 10 at all.

Yes, there are ambiguities in Rule 10 that we feel should be addressed by changes.

Mr. SPRATT. Do you have a proposal or list of those ambiguities that you think should be—

Mr. BROWN. We have furnished the committee with a list of where we have overlapping questions. It is in the file.

Mr. SPRATT. Thank you very much to both of you.

Chairman BOREN. Thank you very much, Mr. Spratt.

Mr. Walker?

Mr. WALKER. Thank you, Mr. Chairman.

Understanding that the Parliamentarians do work with all Members of Congress, hopefully on a reasonably fair basis, and I think that is the case in my experience in the House in working with those individuals, what prevents the Members from basically becoming a captive of the majority's party? And let me give you a couple of examples of the kind of things I am concerned about.

When Republicans have amendments being drafted, our concern sometimes is that coming to the Parliamentarian with the language is the same as basically turning it over to the leadership of the majority party. When rulings are being made on the House Floor with regard to Republican actions, there is often consultation between Members of the majority party at the desk, no Minority Members participating at consultations at the desk; that the majority uses the Parliamentarians, for instance, to write the rules that then go to the Rules Committee, that then come back to the House for purposes of the debate of all the Members.

I guess just on some of those things we question whether or not then the rules become a function of the majority and do not then have equal weight for the minority.

How do we assure within the process that the Parliamentarians are honest brokers who do not have to roll over for the party in control?

Mr. BROWN. If I can go first, come talk to us, that is the best way to ensure that we are available and will help either side.

On amendments that are drafted, we work with Minority Members and Majority Members all the time, on crafting amendments that will be within the rules. We do that almost on a daily basis.

With respect to our drafting role with the Rules Committee, we have worked with the minority staff on that Committee for 15 years trying to put in language whatever they think would be their agenda if they had the votes to pass the rule.

I admit that sometimes it is a matter of perception, that we are close in physical proximity to the Speaker's office and to the Democratic leadership. Traditionally we have sat on that side of the rostrum. It is tradition, simply because that is where the button is where I can turn off the Speaker's microphone, which is very handy.

We are nonpartisan employees and we want to be that way.

Mr. WALKER. I don't have any problem with the fact that you work with Members and so on. The question becomes, though, the problem of if in fact language is being drafted at the Parliamentarian's desk on some amendment, is that then shared with the Chair? Is that then shared with the majority party? Some of those kinds of issues.

Mr. BROWN. If I still have time, Mr. Chairman, to respond, when the minority sends up a motion to recommit, the Parliamentarians do not share that with anyone. When the minority sends up an amendment, we show that to no one. But when it is sent to the desk in a formal way, it is fair game for anyone to come look. But when we are given it on a confidential basis, it remains that way.

Mr. WALKER. Thank you.

Thank you, Mr. Chairman.

Chairman BOREN. Thank you very much.

Senator Reid?

Senator REID. Alan, I wanted to ask you this question for a long time and we will see if you answer it publicly. What do you think is the biggest waste of time that goes on in the Senate?

Mr. FRUMIN. I hesitate to answer that question publicly, although I think it is safe to say that very few of us enjoy hearing two bells and seeing two lights indicating that a quorum call is in progress.

Senator REID. What is the alternative to that?

Mr. FRUMIN. From a technical standpoint, the alternative to going into quorum calls is having the Senate recess either for discrete, brief periods of time, or to have the Senate recess subject to the call of the Chair.

Senator REID. Isn't a lot of that done for Parliamentary reasons? A lot of times a quorum is called for parliamentary reasons?

Mr. FRUMIN. We try to distinguish convenience quorum calls which are instituted in a contentious situation for the convenience of the Members or the body as a whole when the Senate is awaiting the arrival of a Member with a statement, or for that matter, when difficult issues are being negotiated, and quorum calls of the Senate in a contentious mode, when quorum calls are instituted to delay with the intent to prevent the consideration or the adoption of a particular amendment.

Of course, the latter case is impossible to legislate away, since the right of a quorum call is found in the Constitution. The former category, as I said, occur really for the convenience of the body. So on the one hand you have a class of quorum calls that are consen-

sual, and if there is consensus for quorum calls there might be consensus for discrete recess periods.

Senator REID. Your point is well taken.

My next question, in the House, as I recall, we had a procedure there where you had a bill up and you went section by section; isn't that right?

Mr. BROWN. Yes.

Senator REID. In the Senate we go wherever we want to go. And it is really, I think, frustrating to have a bill up, have no one there, and you just wait around, and then 3 days later you go back to section 1 of the bill.

As a Parliamentarian, would it be objectionable to have a rule comparable to what is in the House procedure where you would have to go through a bill section by section, and if someone were not there to offer their amendment when that section was called, then the only way they could get back to it would be by unanimous consent? It would cause more people to be on the Senate Floor and cause the legislation to move more quickly, I think.

Mr. FRUMIN. Since the Senate has no general germaneness requirement with respect to amendments, you may simply be delaying the extent to which particular amendments would be offered. If you had the Senate and had Senators required to amend section by section, what you would have would be an unlimited number of nongermane amendments that would crop up when the last section of the bill was being amended.

Senator REID. How do we handle that? What do we do, to have some order as we go through a bill?

Mr. FRUMIN. Under our current precedents and procedures, in the absence of a germaneness requirement, it is very difficult to impose order.

Senator REID. Do you have a second choice?

Mr. FRUMIN. Not as yet formulated. I would be happy to listen to suggestions and try to comment on the potential advantages or disadvantages of any particular suggestion.

Senator REID. Thank you, Mr. Chairman.

Chairman BOREN. Thank you very much, Senator Reid.

Vice Chairman Dreier?

Mr. DREIER. Thank you, Mr. Chairman.

Thank you, gentlemen, for your very helpful testimony.

I would like to follow on a point raised by our friend from South Carolina, Mr. Spratt, on the issue of jurisdictional overlaps. Mr. Chairman, I would, I would like to ask unanimous consent that at this point in the record we include that list of jurisdictional overlaps provided by the House Parliamentarian.

Bill, I was wondering if there might be any way in which you could expand on this question of jurisdictional overlaps, which is something that clearly has created quite a bit of controversy here.

Mr. BROWN. Mr. Vice Chairman, the word "environment," for instance, has application to the jurisdiction of several committees in the House; environmental research in Science and Technology, NEPA itself has its jurisdictional origins. A case can be made for jurisdiction in Merchant Marine, Public Works, Energy and Commerce. And—

Mr. DREIER. Agriculture, Mr. Emerson just mentioned?

Mr. BROWN. Agriculture, absolutely. These new concepts that have arisen and new areas of legislative concern have arisen since Rule 10 was adopted, and it was just inevitable that some of these new concepts, like environment, overlap several committees. That is not a unique example. There are many.

And also, what happens, and I have to say this with apologies to my colleague, is that often the House passes a bill, and because we have a germaneness rule, it is sort of tightly constructed by subject matter. It goes to the other body and comes back with nongermane Senate amendments, goes to conference, and the practice has arisen of appointing conferees both from the original House committee and from the committee that has jurisdiction over the Senate amendment. And then the next time that topic is reintroduced perhaps in the next Congress, both committees then want to be part of the mix in rewriting it.

And so this practice proliferates, and committees assert jurisdiction, because of the nongermane amendments of the other body, and that often complicates jurisdiction as well. Superfund is a good example of how, through Senate amendments, a subject has been brought into the jurisdiction of many committees in the House.

Mr. DREIER. Thank you very much.

Let me follow on an issue which I have spent a great deal of time focusing on, and that is my concern over the waiver of the 3-day layover requirement, which historically if you look back at it, the tremendous size of legislation has increased dramatically over the past couple of decades, and yet 2 decades ago we traditionally granted Members the 3-day time period to look at legislation before they are required to cast votes on it on the House Floor. In the past several years, we have waived that 3-day requirement, and we have been doing it pretty consistently, and it has concerned more than a few of us.

Do you think the 3-day layover requirement is unrealistic, or do you think we should be adhering to that rule?

Mr. BROWN. Mr. Chairman, I think it is a realistic rule. Members should have a chance to review proposed legislation before they vote on it. I think that is a nonpartisan comment that any rules of order should have as a goal.

Mr. DREIER. May I quote you in the Rules Committee when my colleagues are ruling to waive the 3-day requirement?

Mr. BROWN. The bipartisan leadership often wants business on the Floor. There is a pressure to get legislation before the body, and sometimes that pressure results in waiving layover requirements.

Mr. DREIER. Could you comment on the controversy as it relates to the recommitment motion that sort of developed over the past several years?

Mr. BROWN. The Rules Committee cannot deny the motion to recommit. There has been a continuing controversy over the history of that authority and of how it has been utilized. And frankly I think the precedents have been followed in the rulings of the Chair.

And I can't comment on the fairness of it. I choose to duck that one, Mr. Vice Chairman.

Mr. DREIER. After having responded to the 3-day layover requirement, you feel you have gone far enough?

Mr. BROWN. Right.

Mr. DREIER. Thank you.

Chairman BOREN. Let me just ask a couple of questions. One of the ideas that keeps coming back to us as we look at the overall structure of Congress is that we have too many committees and too many committee assignments, especially when we look at subcommittees and so on.

One thing there seems to be a good amount of agreement on from witnesses, both House and Senate, and from witnesses in both parties, is that Members really have their time fragmented. And we have one Senator that serves on 23 committees and subcommittees. The average in the Senate is around 12. The problem is not quite that bad in the House, but it is still a problem.

This means the committees are also larger than they should be, and it probably means there are some subcommittees we don't need that would be depopulated if Members had to pick and choose and serve only on a very limited number of committees.

Now, in the past, at least on the Senate side, the caucuses have determined, and really executive committees of the caucuses, have determined whether or not Members can get waivers to serve on more and more committees beyond the usual rules. It has been very difficult to turn anyone down.

Nearly all those that have appeared have suggested we come up with some sort of mechanism that would enforce a limitation on the number of committees and subcommittees on which Members could serve.

How would that best be accomplished if we—could we do that by a rule in the two Houses, that would then deny to the leaders, and they seem to want to have it denied to them, the ability to grant waivers?

Would this have to be a statutory enactment? How could we act in a way that the individual caucuses could not have the ability to grant waivers to increase the number of committee assignments that Members may have?

What would be the most effective, air-tight way of doing it that would frankly keep the leaders in the future from being put on the spot by all those that want to have those kinds of requests?

Mr. FRUMIN. I am not sure there is a way of preventing the Senate, and I can only speak for the Senate, from adopting waivers. The rules do limit the number of committees that Senators may serve on. It does take an act of the Senate, the adoption of a Senate resolution, to grant a waiver. So the processes are there.

The rule is to limit Members. And the Senate on a regular basis adopts resolutions to grant these waivers. I don't see the need for any institutional change.

Chairman BOREN. So there is—right now, when we—because I don't think since I have been here, the 15 years I have been here, I have ever seen a debate or seen the issue really raised out on the Senate Floor. It must have been that there was a unanimous consent asked by the leaders after the caucuses or the steering committees of the various bodies involved in this granted a waiver to

Senator Y to serve on another committee or subcommittee beyond the number of slots that are normally allowed.

Is that what has been going on? Has it required Floor action, that we have had routine Floor action but without discussion?

Mr. FRUMIN. It does require Floor action.

Chairman BOREN. So waivers have been granted and it has gone through a Floor process.

Mr. FRUMIN. It takes a resolution adopted by the whole Senate.

Chairman BOREN. Could it be made statutory so that any assignment beyond the number specified—would that be stronger than a rule?

Mr. FRUMIN. Not necessarily, given the fact that each body is free to make its own rules of procedure, and usually these are done pursuant to rulemaking, preserving the right of the respective bodies to change the procedures that affect it alone in the manner that the body can change any of its procedures.

Chairman BOREN. So really we are just talking about not so much a change of the rule but just a will to enforce the rule?

Mr. FRUMIN. I think that is accurate.

Chairman BOREN. Perhaps could there be some requirement of giving advance printed notice? For example, I have never been aware of any time when action was taken to in essence approve by resolution in the Senate that a waiver had been granted.

Could there be some way of having to give a 3-day notice of consideration of that kind of resolution, something that would spotlight it more so that Members—if we made this change and Members really wanted to make sure it was enforced in the future something that might highlight that?

Mr. FRUMIN. The rules could be amended to provide such notice, but bear in mind most matters that come before the Senate by adoption do so by unanimous consent. So even such a notice requirement could be obviated.

Chairman BOREN. Could be waived.

Mr. FRUMIN. By unanimous consent.

Chairman BOREN. Could you put in the rule that a super majority could be required to waive or that a roll call vote be required? I guess you could still ask unanimous consent to waive the rule.

Mr. FRUMIN. Yes, you could, as long as consent is granted, the requirement would be waived.

Chairman BOREN. Is there any rule that cannot be waived by unanimous consent?

Mr. FRUMIN. There are some provisions of law that provide that unanimous consent will not be available to waive a particular restriction, and even those present certain problems in terms of enforcing those on the Floor if a Senator is willing to try in a multiple-step process to waive the original provision against waiving the prohibition.

I find them very difficult to enforce.

Chairman BOREN. Mr. Brown, any thoughts?

Mr. BROWN. No, I think the same condition exists in the House. The committee size is determined by action of the House. The resolution is reported from the respective party caucus and conference, and they are privileged for consideration if they emanate from

those bodies. So the House does visit the issue, maybe not very visibly.

Chairman BOREN. But there is no way to really keep these waivers from being issued other than just the Members having the will to say, "We are not going to allow it anymore," or we are going to object to consideration of the waiver?

Mr. BROWN. In the House they are privileged for consideration, which means they can be voted upon. You can conceive of a situation, and it used to exist in the House, where increase in committee size and membership were only affected by unanimous consent.

Chairman BOREN. That is a possibility too, I suppose, something we might look at; it would require unanimous consent to grant a waiver. I don't want us to take up the resolution of a waiver, but that might be a possibility. Once the decision is made at the beginning of the Congress, to change the number would require—or the number of slots on a committee or allow a waiver of the rules on how many committees and subcommittees on which he could serve or she can serve, it would require unanimous consent? That would make it very difficult to achieve, if anybody wanted to enforce the rules.

Mr. BROWN. Yes.

Chairman BOREN. What about the question of bringing up the same issue over and over and over again?

As I recall, I remember Senator Magnuson when he served in the Senate was keeping tabs on how many times we voted in one year on the very same abortion issue, and also the very same busing issue. And I remember he was trying to figure out a way he could link in a single amendment those two issues and really—and finally get it over with once and for all. But I think we had something like 90 votes on each of those. It was really the same thing over and over again.

The agriculture bill came along and we had a school busing amendment or an abortion amendment. The foreign aid bill came along, you had the same thing. And the Justice Department appropriation came along, you had the same thing. You might have it five times on the same bill, even.

As I recall from my days in the State legislature, we had a rule that once a matter was considered during a particular session, it could not be brought up again except by some super majority, because perhaps some emergency had intervened that required consent to bring up the same subject matter, so that once decided, always decided for that year.

Do we have any mechanisms available to us in the current rules of either House to prevent the same thing from recurring over and over again?

I suppose in the Senate it is even more of a problem with nongermane amendments. And is there any kind of a workable mechanism that could be established to keep us from climbing that same hill and every hill that comes along?

Mr. FRUMIN. There is no mechanism in the Senate that would prevent that same issue from being discussed and debated over and over again. I am skeptical as to whether any rules change would really accomplish this, because it becomes very difficult to deter-

mine that an issue is in fact the identical issue or substantially the same issue as one that has been disposed of before.

Senators and their staff are quite adept at dealing with nuances of an issue. And so it becomes almost impossible to say that this issue has been resolved once and for all, and that the issue as now presented is not different or substantially different from the issue that has been resolved.

Chairman BOREN. Are you familiar with State legislatures and whether or not any of them have rules in that area?

Mr. FRUMIN. I have no such knowledge.

Chairman BOREN. Thank you both very much.

Let me ask our colleagues. Are there any other questions of these witnesses? Any last questions that any Member wanted to ask that did not have a chance?

Senator REID. Mr. Chairman?

Chairman BOREN. Senator Reid?

Senator REID. Alan, the Chairman asked you about waivers. Is there anything that we could do—let's say that there is a recommendation in the Senate that Members serve on only two committees, and four subcommittees, or something like that. How would we enforce something like that?

Mr. FRUMIN. Well, I can speak for membership on full committees. It would be difficult for me to address the membership on subcommittees since that is done at the committee level.

Senators are appointed to full committees by resolutions of the Senate. It might be possible to provide a point of order against the consideration of any resolution that would make appointments of Senators in such a way as to prevent the adoption of the resolution if a Senator served on more committees than was authorized by the rule.

Senator REID. I hope our staff hears that clearly. That is excellent.

And the subcommittees, how could we handle that? You said it wouldn't be done—it is not done in the Senate, all that is done on the committee level.

Mr. FRUMIN. The full committees assign Members to subcommittees. So, to the best of my knowledge, there is no legislative vehicle that comes before the Senate that deals with the question of specific assignments of Senators to certain subcommittees.

Senator REID. We could do that so that if we had a rule that you could serve on four subcommittees the only way you could get around that would be what?

Mr. FRUMIN. Again, I am not sure what the sanction would be if one committee decided that it wished to assign a Senator to a subcommittee such that the total number of subcommittees on which that Senator served exceeded the limit set out in the rules. It is unclear to me what sanction would be available.

Senator REID. What possibilities are there?

Mr. FRUMIN. I am not sure. I would hate to speculate.

Chairman BOREN. Seems to me perhaps you could say no committee may assign—to use Mr. Reid's example—Members to serve on more than two subcommittees of each of those their full committees. That would effectively limit you to four subcommittees.

Wouldn't that be possible, if we provided such a rule in the Senate rules?

Then it would be that a chairman of a committee would be violating the Senate rule to assign a Member to more than two subcommittees of his committee.

Mr. FRUMIN. The rules could be amended.

The question then becomes what sanction would be available to enforce that prohibition.

Chairman BOREN. Guess you could put in no funds shall be budgeted to a committee that violates such a rule. That might be pretty effective.

Mr. FRUMIN. It might very well work.

Senator REID. Thank you, Mr. Chairman.

Chairman BOREN. Thank you very much.

Yes, sir?

Mr. ALLARD. Yes, Mr. Chairman. I would like to pursue a topic I don't think anybody has had an opportunity to bring up.

Would it be possible—and this is something that is used frequently in state legislatures where they have a joint committee made up of the leadership of the House and Senate that formulates some rules that both bodies can operate on that is of interest to both bodies. For example, the conference report procedure and how those are brought up in both bodies and how they get voted on. Is that possible under our Constitution to provide for that?

Mr. BROWN. In the history of the House and Senate there have been joint rules. Each House has the authority to waive them, but the waiver can be very difficult.

Mr. ALLARD. You see, this is my point. If you have a joint committee like that, the way I would see that happening is the way it happens in most legislatures, is the leadership comes together in the joint committee. They agree on a set of rules. Those rules then go to each body to be approved by each body. Now, in order to change that, it would require going back to each body and getting approval to change those joint rules.

And that is the reason I brought up my question. Because then all of a sudden you have negated—I mean, you said that is okay, and then all of a sudden you say as long as it applies to that House. Each House would not have to abide by it, so that is the conflict I see.

I am trying to get a clear determination from you, both of you, as to whether you think that is possible since both bodies would originally agree and agree that it is an issue that would be important to both bodies. And if one body didn't comply with it it would also affect business in the other body and would not allow any House or Senate to just unilaterally to change that rule.

Mr. FRUMIN. I think it would be very difficult, especially if the rules went beyond the issue of conference which is the one obvious area where the two bodies do come together and try to focus as a unit.

Mr. ALLARD. Well, that would be the area I would think mostly would be on conference rules, but there might be an agreement on adjournments, for example, and I think we already have that.

Mr. BROWN. The Constitution, of course, provides some rules which the House and Senate cannot individually waive.

Mr. ALLARD. But you don't see anything in the Constitution that would prohibit the House and the Senate from setting up such a committee and to set up more—what you would end up doing is more or less codifying those conference rules. No objection as far as you know in the Constitution?

Mr. BROWN. The provisions of the Budget Act reflect that type of discipline in both bodies.

Mr. ALLARD. Thank you.

Chairman BOREN. Thank you very much.

And, again, I want to thank both of you for being with us today. We appreciate it very much.

And as we do proceed, as you can see, we will undoubtedly—and the staff will undoubtedly—be coming back to you for suggestions. Once we make decisions as to our recommendations, I am certain we will be coming back to you for technical help in terms of getting your suggestions as to how we mechanically can carry out some of the recommendations or some of the rules changes in areas like those that Senator Reid just touched upon, and others, as we move toward our recommendations.

We very much appreciate you both being here, and I think I express the appreciation of those on both houses, both sides of the aisle. We have great respect for what both of you do and the way in which you conduct yourself, the fairness and professionalism, and it makes an enormous contribution to the work of both houses.

We thank you very, very much for being with us today.

Chairman BOREN. I want to welcome our next witness, who will be Mr. Lloyd Cutler. If he would take a position at the witness table.

It has been my privilege to work with Mr. Cutler in a number of situations in the last few years in which I was chairing the Intelligence Committee. He was a member of an advisory committee and senior former officials from both parties in our government advised us on national security and the law as well.

I have been privileged to work with him on a number of projects for our Nation's greatest university, by any objective standard, which, of course, I am sure I don't need to tell any of my colleagues that is Yale University, where we have been privileged to work together on a number of joint projects.

Mr. Cutler is a former counsel to the President of the United States in the Carter administration. He is a partner in the firm of Wilmer, Cutler and Pickering.

Senator Mitchell recently said, "To those unfamiliar with the Senate, our rules are arcane and our precedents are incomprehensible." And then he went on to say, "And to those familiar with the Senate, our rules are arcane and our precedents are incomprehensible." I think most of us would have to agree with what Senator Mitchell said.

Your writings in the Washington Post and the lively interchange that it has sparked, which have drawn in former Senator Howard Baker and George Will, Norman Ornstein, among others, have certainly made some of our rules subject to greater public understanding, and stimulated, I think, a lot of very good and constructive debate, particularly your comments on the filibuster and whether

it is appropriate to maintain supermajority requirements to achieve cloture in this period of time.

I just looked at the study our staff has prepared. In the 41 years from 1917 to 1958 there were 22 cloture motions voted on; in the 11 years from 1959 to 1970, there were 27; and in the 21 years since then there have been over 280.

So when we look at the escalation of the use of the filibuster and the number of situations in which cloture has been filed and voted on, we have certainly, in just the period of almost in one year, every year since 1971, we have had roughly as many cloture votes as there were in that 41-year period. Or every 2 years we have had as many cloture votes as there were in that early 41-year period.

So there is a great escalation in the use of the tactic, and I think that certainly is something that—about which we should reflect wherever we come down on this issue. It, obviously, means there has been a slowing of the deliberation, the ability to take up certain issues as the filibuster has been employed more and more.

I mentioned earlier there seems to be less self-restraint. Rules are in effect when Members feel the obligation to practice self-restraint.

In an earlier period, cloture was only invoked on matters of very serious national purpose, basic policy of government. And filibusters were only employed when something that represented a major change in the law or had a major impact on a region of the country or on those with certain core beliefs. They have been employed on every possible subject from the gasoline tax to you name it in the last few years.

So, Mr. Cutler, we welcome you to the committee, and we would value any thoughts you have on this issue or any other issue. You have dealt with Congress in a number of respects, and we would value your thoughts about how we should proceed with reform.

STATEMENT OF LLOYD CUTLER, FORMER COUNSEL TO PRESIDENT CARTER

Mr. CUTLER. Thank you very much, Mr. Chairman, and I admire the efforts of this joint committee to bring the rules and organization of the Congress into the 20th or I might say the 21st century.

You might say, in light of your original comments, that the filibuster is addictive, and the longer we permit it the more frequently it is going to be invoked. And you could add to those statistics you read, that from 1789 to 1806, when the Senate had as one of its rules the motion from the previous question, as the House does, to be resolved by a majority vote, there were only four filibusters, and in two of those a debate was cut off because of a majority vote. Perhaps because under the rule at that time it was possible, practical to cut off the filibuster.

As you have noted, I appear today concerning Senate Rule XXII's requirement that a supermajority vote is needed to cut off debate on a pending bill or motion, including a motion to amend the rules. I am not a parliamentarian, as the two predecessor witnesses were. I am a constitutional lawyer. And in that capacity I would submit to you that the supermajority requirements of Rule XXII are pretty clearly unconstitutional.

If I can persuade you that this constitutional issue is a substantial one, I also submit that the Senate, which is in part a judicial body, has a judicial duty to consider and decide this question. And if a majority of the Senate were to agree that the supermajority requirements are unconstitutional, that same majority can, in my view, and should amend the rule so that a majority vote would be sufficient to cut off debate.

As you know, and as you have referred to, I advanced this argument in an Op Ed piece in the Washington Post on April the 19th, and that produced opposing articles from my friends George Will and Senator Howard Baker, and a summing up by Norman Ornstein saying we had all missed the point. And Norman came up with a practical proposal for amending Rule XXII, which I would support very much. Copies of those articles are attached to my statement.

I would like to begin by summarizing the main points of my contention that the supermajority requirements are unconstitutional, and I apologize for dragging you into a constitutional argument like this.

Of course, Article I, Section 5, of the Constitution states that each House may determine the rules of its proceedings. But this cannot mean that either House can adopt a rule which violates an express or implied provision of the Constitution itself. For example, the provision that is also in Article I, Section 5, that "a majority of each House"—I am interpolating—"shall constitute a quorum to do business," or any of the other specific rules governing House and Senate proceedings that are also expressly stated in Section 5.

And when the Philadelphia Convention approved the provision that a majority of each House shall constitute a quorum to do business, it did so after expressly rejecting proposals that it would have required a higher quorum, a supermajority, in order to do business.

And Mr. Madison gave this explanation of the reason in the *Federalist*. "In all cases where justice or the general good might require new laws to be passed or active measures to be pursued, the fundamental principle of free government would be reversed. That is, if it took a supermajority to have a quorum, it would be no longer the majority that would rule. The power would be transferred to the minority.

Now, doing "business"—the constitutional phrase—I would submit clearly covers any action that requires a vote. A vote is required to adopt rules or to pass a cloture motion to cut off debate. For the Senate to adopt a rule, as it has, requiring the affirmative vote of 60 Senators to pass such a motion clearly violates the quorum clause of the Constitution.

It means a supermajority of at least 61 Senators, including the Senator who was filibustering, who would presumably vote against it; must be present as the quorum to do the business of voting on the cloture motion and that 60 of them must be present to vote for cloture. That is a plain violation of the quorum provision of the Constitution itself.

There are other provisions of the Constitution that plainly imply that the affirmative vote of a majority of the Senators present is sufficient to pass a bill or to approve a motion, such as a motion for cloture, or to adopt or amend a rule. There are—as you know,

there are five expressly enumerated cases in the original Constitution, I think at least one in the amendments, where the text itself requires a two-thirds vote. That is the Senators advice and consent to a treaty, the Senate's guilty verdict on impeachments, either House expelling a Member, both Houses overriding the Presidential veto and both Houses proposing a constitutional amendment.

And in all other cases, as the Supreme Court put it in *United States v. Ballin*, it is the general rule of all parliamentary bodies that—and I am quoting—“when a majority is present, the act of a majority of the quorum is the act of the body. This has been the rule for all time, except so far as in any given case the terms of the organic act under which the body is assembled have prescribed specific limitations.”

Another powerful precedent for such a reading is the Supreme Court's holding in *Powell* against McCormack, that the House of Representatives, despite its express power to be the judge of the qualifications of its own Members, could not add to the three standing qualifications for election to that chamber, age citizenship and residence, that are specified in the Constitution.

I might interpolate that I was part of the legal team that argued for Speaker McCormack in the *Powell* against McCormack case.

Under this principle, the Senate could not constitutionally adopt a rule that its vote to advise and consent to presidential appointments or to cut off debate on a pending bill or motion requires a two-thirds or any other supermajority when the Constitution itself does not so specify. That would be adding a constitutional requirement that is not in the Constitution itself.

Then Article I, Section 3, provides another strong indication that only a majority vote is required for all but the constitutionally specified supermajority cases. This is the article about the Vice President. It states that the Vice President shall preside over the Senate, quote, but shall have no vote except when they are equally divided.

According to Hamilton, the Vice President was given that tie-breaking Senate vote “to secure at all times the possibility of a definitive resolution of that body.” Surely the Senate's power to determine the rules of its proceedings could not allow it to require that all bills must pass by a two-thirds vote or by a margin of at least two, thus disabling the Vice President from exercising his constitutional power to break a tie.

And the same, I would submit, necessarily applies to the provisions of Rule XXII that motions to cut off debate require a supermajority of 60 in the case of a bill or two-thirds in the case of a motion to amend the rule.

This principle of majority rule—this constitutional principle—is not, as George Will has suggested, limited to votes that have a consequence beyond each House such as passing legislation or confirming executive or judicial nominees. It applies to any Senate business, including motions to cut off debate.

And, in any event, it is as plain as the nose on Pinocchio's face that when a Senate rule requires a large supermajority to cut off debate, the rule does have a consequence beyond the Senate. The rule that can and does block the majority in the Senate, the majority in the House and the President from enacting and signing an

important bill into law certainly has a consequence beyond the Senate Chamber.

The same is true of a treaty that is not ratified or a nominee for the Supreme Court or the Cabinet who is not confirmed because 60 votes cannot be found to break a filibuster.

Now, my friend Senator Baker concedes it would be unconstitutional to require more than a majority vote to pass an ordinary bill or to amend a rule, but he draws a distinction between passing bills and amending rules on the one hand and motions to cut off debate, for which Rule XXII requires a supermajority vote. But surely the two have the same effect, as we have learned every time the Senate has considered a change in Rule XXII. Attempts to change it were defeated by filibusters, never voted on in 1961, 1963, 1967, 1969 and 1971, before cloture was finally achieved to cut off debate on the modest amendments made in 1975, which were 60 votes for all business except amending the rules and a two-thirds majority on amendments of the rules themselves.

Incidentally, that was the first case in which a cloture motion to cut off the debate succeeded on a civil rights bill in the history of the Senate.

Senator Baker's argument, it seems to me, proves too much. If the Senate can constitutionally require a supermajority vote to cut off debate on motions to amend its rules, it can constitutionally require unanimous consent to cut off debate on this or any other pending matter, as it actually did from 1806 to 1917. And that would mean that any minority, down to a single Senator, could constitutionally prevent the Senate from doing business, and it would make a mockery out of the express constitutional provision that a simple majority is sufficient for a quorum and the implied provision—which Senator Baker concedes—that a mere majority is constitutionally sufficient to pass any measure, including an amendment of the rules.

It would mean—contrary to Madison's account and the framers' intentions—that the minority would indeed prevail.

Finally, George Will has argued that the generation that wrote and ratified the Constitution set the Senate's permissive tradition regarding extended debate, but that, I would submit to you, is historically wrong. Rule 10 of the Continental Congress, following the precedent of the English Parliament and Jefferson's *Manual of Parliamentary Practice*, allowed the motion for the previous question that I referred to earlier under which debate could be cut off by a simple majority and so did Sections 8 and 9 of the rules adopted by the first Senate in 1789.

The motion for the previous question was not eliminated from the Senate rules until 17 years later in 1806. The generation that wrote and ratified the Constitution expressly allowed a simple majority to cut off debate, and it did cut off debate on at least two occasions before 1806, as Senator Douglas has described in two speeches before the Senate that I have footnoted in my statement. And perhaps it was for that reason that Senate filibusters, contrary to what George has suggested, were extremely rare in the Senate in the first 2 decades of the republic.

Now the Senate, of course, has judicial as well as legislative functions. It has the sole power to try all impeachments and to judge

the elections and the qualifications of its own Members. I would submit to you the Senate also has the duty, at least in the first instance, to judge the constitutionality of its own rules and to annul or amend any rule that it judges to be unconstitutional.

Now, Senator Baker believes the Supreme Court would accept and decide a case seeking to resolve the constitutional issue, and I hope he turns out to be correct. But as a constitutional lawyer I would say that, apart from questions of standing, immunity from suit, speech and debate clause and whether the court would resolve a political question arising within the legislative branch, I don't see how the court could consider the issue until the Senate itself had first tried to resolve the matter one way or the other.

It seems to me that can and should be done. As I understand Senate rules and customs, it could be done any time that a cloture motion comes before the Senate. Any Senator could raise a point of law or parliamentary inquiry as to whether a supermajority vote in favor is required, as provided in Rule XXII, or whether a majority vote is sufficient because the supermajority requirements of Rule XXII are unconstitutional.

The Vice President, in his capacity as the President of the Senate, could give an advisory opinion on this issue—as Vice President Nixon did in 1957 and Vice President Humphrey did in 1969 on a somewhat different constitutional aspect of cloture—and that was whether at the beginning of a Senate term, in a new Congress, the Senate could amend its rules by majority vote or whether it was a continuing body bound by Rule XXII.

Following current Senate custom, the Vice President's ruling would not be absolute but he would refer it to the Floor to be resolved by majority vote, with the Vice President casting his constitutional tie-breaking vote if necessary.

I would submit, Mr. Chairman, that whether filibusters or the supermajority requirements of the rule are desirable or undesirable is beside the point. Your first question as Senators, it seems to me, is to decide whether the supermajority requirements of the rule are unconstitutional. And I would respectfully submit that this question should be considered and deemed substantial by the Senate Members of this committee, with a recommendation that the issue be taken up and resolved by a majority vote on the Senate Floor.

And I would be happy to answer your questions.

Chairman BOREN. Thank you very much, Mr. Cutler.

[The prepared statement of Mr. Culter is printed in the Appendix.]

Chairman BOREN. Let's suppose a point of order were raised and the Chair ruled—be it the Vice President or the presiding officer at the time—that the filibuster indeed—Rule XXII did indeed violate the Constitution and, therefore, it would be a nullity and then an appeal was made of the ruling of the Chair. That motion is debatable; is it not?

Mr. CUTLER. Again, as I said, I am not a parliamentarian. My understanding is that it would not be an appeal. It used to be an appeal, but that current Senate custom is that the Chair says my ruling is advisory only and I myself refer it to the Floor.

Chairman BOREN. I see Mr. Zweben is here. He is a former parliamentarian. Maybe we can just call on him. We are being a little informal here.

Under the procedures of the Senate, is that a possibility? The Chair can refer a matter to the Senate for its own determination?

Mr. ZWEBEN. On any point of order the Chair does have that option.

Chairman BOREN. So if that were the case, would that be debatable? Once it is referred to the Senate, would that be debatable?

Mr. ZWEBEN. Might depend on the overall situation. If it were not a debatable, the underlying question itself that would appeal from it might be—

Chairman BOREN. Could you come up to the microphone just a minute? We are going to hear from Mr. Zweben as a member of a panel later, but I know he is very familiar with the rules and—Mr. Murray Zweben was a former parliamentarian of the Senate.

I am wondering if, as Mr. Cutler suggested, the question of constitutionality were raised, the Vice President or whoever happened to be presiding did rule and it was referred, is it a possibility that the vote on whether or not it is unconstitutional could itself be filibustered? Could there be a filibuster in terms of the debating of the issue?

Mr. ZWEBEN. Any constitutional question—I was out and walked in and didn't hear Mr. Cutler's question—any constitutional point of order under the precedents of the Senate, back 200 years, has always been submitted by the Chair to the Senate for its decision ab initio. The Senate does not decide constitutional points of order.

Chairman BOREN. The presiding officer does not?

Mr. ZWEBEN. Yes, presiding officer of the Senate.

Chairman BOREN. Would there be an ability to block the Senate from being able to decide by filibustering during a debate, as to whether or not, once the question is put to the Senate?

Mr. ZWEBEN. That is possible. As I said a moment ago, it would depend on the context. If the underlying question were not debatable, that would be debatable. But that would be fairly rare, I would think in, the context we are talking about.

Mr. CUTLER. I can say, Mr. Chairman, that when Vice President Nixon made such a ruling and when Vice President Humphrey made such a constitutional ruling, 57 and 69, and that went to the Floor for a vote, there was indeed a vote after a short discussion. And I would think it would take a very brave Senator who would try to filibuster and prevent a vote on the issue of whether a rule was constitutional.

Mr. ZWEBEN. I was on the Floor in both those instances. I remember Mr. Nixon said, I am not allowed to rule on this. If I were, I would do it this way. But he made no friends with that statement, as I recall.

Chairman BOREN. This is something interesting. We might research this as we go along.

Thank you very much, Mr. Zweben. We will have you come back up in a moment.

It might be interesting to research this and have the parliamentarians research this as to whether or not indeed that determination itself could be subject to a filibuster.

Mr. CUTLER. If that were true, Rule XXII would indeed be catch-22.

Chairman BOREN. That is correct.

Let me turn to my colleagues for questions. First to the vice chairman.

Mr. DREIER. I will yield to Mr. Allard.

Chairman BOREN. Mr. Allard.

Mr. ALLARD. Thank you, Mr. Cutler. I appreciate your comments.

I will ask you the same question I asked the parliamentarian. Do you see any constitutional reason why you could not have a committee that has set up joint rules that both the House and Senate agreed to that would bind them to or codify their conduct as far as the way you manage the conference committee, for example?

Mr. CUTLER. Well, I don't see any reason why that could not be done constitutionally, as long as the rule that was adopted didn't contradict or be otherwise inconsistent with some express or implied provision of the Constitution. And there are, I believe, many cases in which a statute has been passed containing a rule applicable to the House or the Senate with a reservation that any further amendment of that rule can be done by the single chamber alone.

So even though it is incorporated in a statute, a rule, this is true of all the budget legislation, I believe, the rule, as contained in the statute, is identified as a rule of the House or of the Senate even though it may be identical, which the House or the Senate, as the case may be, can change by itself without the concurrence of the other body.

Mr. ALLARD. You say that comes up in issues relating to the budget?

Mr. CUTLER. There are many other—all of the fast-track legislation, I believe, this is true of. For example, the NAFTA legislation.

Mr. ALLARD. I see.

Mr. CUTLER. Budget legislation, et cetera.

Mr. ALLARD. Do you happen to have a list of those situations where that is provided for?

Mr. CUTLER. I don't have one, but I would think the Senate and the House staffs could readily provide it or I would be glad to provide it, if necessary.

Mr. ALLARD. Thank you very much.

Mr. Chairman, see if we cannot get the staff to work out something like that.

Chairman BOREN. Thank you very much.

Senator LUGAR.

Senator LUGAR. Thank you very much, Mr. Chairman.

Mr. Cutler, let me just start by saying that I am not certain today that there will be a defense of the filibuster per se, but, at the same point, clearly the thing that distinguishes the Senate as a legislative body is unlimited debate, and there may be here a conflict between what you perceive to be the constitutional aspect and what clearly is a traditional aspect that most Senators have felt very important for 200 years.

My own view, I suspect, is that for the moment Democrats in the Senate are impatient to get on with the program, and they find these filibusters by Republicans or threats of them to be unpleasant impediments. But I would suggest that filibusters are rarely ef-

fective and almost never effective if the Majority Leader decides that he really wants to make the people talk and go through the arduous physical aspects that are involved in maintaining the Floor for long periods of time under difficult circumstances.

I think what is occurring presently are feints and jabs in which Republicans may suggest that a filibuster might be in the offing, and the Majority Leader is perhaps not prepared to devote time on the calendar to a particular item and, thus, passes on to something that might be handled. I am not certain that that is a bad idea.

In other words, it seems to me that the threat of filibuster but the ability of the majority really to make the people talk and to go through the arduous circumstances is a reasonable trade-off for the privilege of having unlimited debate. And, therefore, I am not certain even if you are correct on the Constitution—and I think that is clearly up for grabs—I would guess that in the event this came to the Chair, as you have suggested, and the Chair gave it to the Senate, that a debate would ensue and that, in the current situation, Republicans would debate it a long time. They would not be intimidated at all by that thought, simply because they would perceive it as an attempt by the majority to roll the minority. Very clearly, that really is what we are about presently.

So I am not sympathetic to your argument, but, at the same time, I ask you for your comment as a traditionalist. Is there not some value in this idea of unlimited debate as a general principle and practice?

Mr. CUTLER. Well, Senator Lugar, I would readily concede to you that from wherever one sits or stands on the political spectrum there have been times when people opposed to a particular bill considered a filibuster useful and that it has been employed about as frequently to block good bills, in quotes, as bad bills or bad bills as good bills, any way you want to say it.

But there is a Constitution. This is not a Senate custom which one can read into the Constitution on the theory that it was a policy practiced from the very first Senate. It was not. The first Senate adopted rules which contained the motion for the previous question to be decided by a majority vote.

If you were to talk about a change in Rule XXII, as Norman Ornstein has suggested, so that people who wish to filibuster have to go through the physical hardship of doing it and all the other Senators have to sleep on cots in the Senate corridors as long as the filibuster lasts, and if you then, in cases where you have 43 Republican Senators, for example, where you can readily spell one another and you cannot just depend on physical endurance to wear somebody out, he proposes starting on the first cloture motion with 60 required to cut off debate, on the second cloture motion 55 required to cut off debate, and on the third cloture motion a mere majority would be sufficient to cut off debate.

I would warmly support that. And that might be defended as constitutional, perhaps on the theory that it relates to the question of how much time are we going to allow for debate and that, eventually, the constitutional quorum requirements and the constitutional principle of majority rule would be observed.

You surprise me when you suggest Republican Senators, if they could, would filibuster the issue over whether the rules themselves

are constitutional. You might just as well say you would filibuster the trial of an impeachment to prevent the reaching of a judicial decision. You have a judicial function about your own rules, and I would submit your conscience as a Senator at that point should prevail over the interests of the party or your views about the merits of a particular bill and at least allow it to come to a vote.

Senator LUGAR. I think my conscience would rise to the occasion, but I think I would still need to talk a long while about the question, even as I was trying to find that sense of conscience.

Mr. CUTLER. If we had a 3-month oral argument before the Senate of the United States and we did it one time and we voted on this constitutional issue, unlimited argument, it would be worth it.

Senator LUGAR. I appreciate your point, and I don't want to extend my time, Mr. Chairman, but I would say, as a matter of practice, the most exciting filibuster in which I participated was the one on natural gas, the Pearson-Bentsen situation. I was not one of the filibusters. As a matter of fact, there was very little speaking. There were 39 roll call votes in a 24-hour period. It was filibustered by calling for a vote.

Now, the filibuster never said we are filibustering, per se, and I am not certain where cloture came into that picture at all. We were in a dither voting on amendments, changing a figure here or there. And I would suggest that the filibuster of Senator Alan on the Panama Canal Treaty was probably the forerunner for this type of thing by procedure rather than by debate.

In other words, I can grant your point that perhaps we should get some rules as to what kind of a filibuster really is in the tradition of the Senate in terms of germaneness, et cetera.

Mr. CUTLER. Do you feel it was right the civil rights bill was prevented from reaching the Senate Floor for more than 50 years?

Mr. LUGAR. I am not comfortable with that fact. I would have voted for it. I would have disagreed with the people filibustering. But it makes the point that those who were arguing in that way, as well as often in the filibuster case, are attempting to support a minority point of view. It is a function of our Constitution that minorities are protected in many, many ways. Not to the point that they finally win if they cannot get a majority, but so a little time passes so, in fact, the public might be informed of what the issues are and may weigh in and people may change their minds. At least, that is a rationale for some of the more modern filibusters.

Mr. CUTLER. I think it was Senator Henry Cabot Lodge, Sr., who first said that, in essence, that to debate is sensible but never to vote is imbecile.

Senator LUGAR. Well, that is a good point. Thank you.

Chairman BOREN. Senator Sarbanes?

Senator SARBANES. Thank you, very much, Mr. Chairman.

First of all, I want to say you have made a very significant contribution to the consideration of what I have increasingly come to perceive as a very important issue in terms of doing the Nation's business.

Now, the fact of the matter of is that whoever the filibuster is used against complains about it bitterly. Senator Dole, who just used one only a few years ago, was complaining about its use by

others when he had a responsibility to try to move a program through.

And I think it is very important to try to identify what we are getting at, what the concern is. I just want to clear up a couple of factual or historical questions. First of all, it is not accurate to say that those conducting a filibuster have to undergo a very difficult burden in order to do so the way the Senate works.

The majority has to produce a quorum to keep the Senate in session. Otherwise, someone throws in a call for the quorum. You then have to produce the 51 people that you said the Constitution requires for a quorum if you are going to go on doing business. You then have to summon from wherever they are the members of the majority to make the quorum.

The people conducting the filibuster can work it in two- or four-person shifts. I mean, you know, they start talking. One guy talks for a couple of hours, then another for a couple of hours, and then they will put in a call for a quorum at 2 o'clock in the morning. Meanwhile, their people have all gone home, and the other side then has to produce people.

Now, unless you are going to result to the sergeant at arms going around and rousting everyone out and bringing them in, in which case you are accused of dragooning them, as happened when they went over to bring Senator Packwood in on the Floor, and they sputtered and complained that this was outrageous.

So the way the filibuster is conducted now, filibuster by debates, the burden falls not on the people, not on the side doing the filibuster. It may fall on a few of their people doing standing duty at the particular time, but the burden falls on the others who have to produce the numbers to create a quorum and keep the body in session. That is the first point.

Now, the second point, and I really—and the other I make by way of a statement, but I really want to put this to you in a question. In the articles in the Post, your critics in one instance said, "The generation that wrote and ratified the Constitution, the generation whose actions are considered particularly illuminating concerning the meaning and spirit of the Constitution, set the Senate's permissive tradition regarding extended debate. There was something very like a filibuster in the first Congress."

That is a direct quote from one of those columns that was critical of your initial statement. And then the other one said, speaking of the Senate, "It was designed for that purpose by America's founders, who saw it, in Jefferson's words, 'as a saucer into which the Nation's passions may be poured to cool.'"

Now, I have difficulty understanding how to square those two comments with what I take to be your assertion of fact, and I think others as well, that in the early Senate there was no filibuster, and, in fact, that the early Senate, I think up until 1807, allowed a motion for the previous question which would just cut off debate. That motion, I take it, could be carried by a majority vote, and once carried all debate ceased and the question was put.

Now, how do we square these two?

Mr. CUTLER. The first comment that you quoted is by George Will, and I do submit that it is historically wrong.

In the first place, he has to get around what Madison and Hamilton said, which I expressly quote from the Federalist. Madison said that we rejected supermajority requirements for a quorum because that would reverse the principle of Democratic government that the majority would rule, and it would mean that the minority would rule. So certainly Madison is not in George Will's camp.

In fact, as I point out in my statement, and as you have just pointed out, Senator SARBANES, the first Senate adopted rules that allowed the motion for the previous question to be carried by a simple majority. There were hardly any filibusters, and two of the four times that the motion for the previous question was invoked, debate was, in fact, shut off by a simple majority. And perhaps the reason was you could shut it off by a simple majority, and that is why there were so few filibusters.

Senator SARBANES. Was the reference that Will makes, there was something very like a filibuster in the first Congress, do you have any idea what he is referring to?

Mr. CUTLER. I don't actually know what he is referring to, but there are studies of this subject.

In two speeches made on the Senate Floor by Senator Paul Douglas, quoting Irving Brandt, a noted constitutional historian, went into this subject of the motion for the previous question at length. That is cited at page 7 of my statement.

Senator SARBANES. If you have four motions and two were carried by a majority vote, in the two instances in which they were not carried by a majority vote the Senate, on a majority basis, was making the judgment that the debate should be allowed to continue.

Mr. CUTLER. Right. And in those days, as I understand, the motion for the previous question could be introduced either in the affirmative form or the negative form. And it is sometimes introduced in the negative form to allow debate to continue.

Senator SARBANES. As I understand it, the essential thrust of your position is that the Constitution specifically provides that a majority of the body, a simple majority of the body shall be a quorum for doing business. The Constitution also specifically provides those instances in which to complete a piece of important business a majority—an extraordinary majority will be required. In other words, beyond the simple majority.

Mr. CUTLER. Correct.

Senator SARBANES. Ratification of treaties, overriding vetoes.

Mr. CUTLER. Impeachment.

Senator SARBANES. Impeachment. And, therefore, the implication of that is to do actual business on the standard matters would require a majority. Otherwise you, in effect, are altering the quorum requirement of the Constitution.

Mr. CUTLER. And in support of that, there is the further point about the Vice President. The Vice President clause says he shall preside over the Senate but have no vote unless they be equally divided. That clearly implies that a majority was sufficient to carry legislation or any other business before the Senate, otherwise, the Vice President's tie-breaking power would be taken away.

If the Senate adopted a rule saying it takes a majority of two-thirds to pass a particular kind of motion that is not one of those

expressly enumerated in the Constitution, the Vice President is neutered and he has no vote, or his vote is wasted. In fact, the issue would never arise because ties would be insufficient to create the vote.

Senator SARBANES. Well, I understand at the outset that the Chairman, Senator Boren, put in some figures in the record about the use of the filibuster.

Chairman BOREN. Yes, about how it is escalating.

Senator SARBANES. And the reason I think your testimony is so important is it seems to me, clearly, the filibuster has now come to be used in a manner in which it was never employed over most of the sweep of our history, which has, in effect, created I think a much more pressing issue to be addressed.

Of course, your position is that even over the sweep of the history it was contrary to the Constitution, but in practice it was used so infrequently that it wasn't assuming the same dimensions which it is now assuming. It was used about 50 times in the last Congress. It has been used already in this Congress a number of times.

And, in effect, it is standing Madison on its head because, essentially, the minority is saying to the majority that unless the legislation is written to their specifications they will not allow consideration of it. Not that they won't vote against it, which, obviously, I would expect them to do in the end, but they simply won't allow it to be considered.

I think the Ornstein idea is an interesting one, because if you assert that the purpose of the filibuster is to slow things down, draw focus and attention to an issue, provide a time for the mobilizing of opinion across the country—I mean one can look at that, but that is for purposes of—would, in effect, be for purposes of delay, not for the absolute purpose of preventing the consideration of a measure.

As it is now working, it is actually being used so that the consideration of a measure is precluded altogether.

Now, your view on the dissenting majority requirement, I take it, is if one had a reasonable time frame where eventually you got to the measure so you could act by a majority vote pursuant to the quorum requirement of the Constitution that procedural rules that delayed you getting there might be constitutionally acceptable. But the procedural rule, as is now the case, used to absolutely prohibit you from getting there is not constitutionally acceptable. Would that be the case?

Mr. CUTLER. That would be my submission, Senator Sarbanes.

In support of what you are saying, the current use of the filibuster to prevent a decision rather than to illuminate the issue, debate the issue—I looked up the origin of the word filibuster, and it turns out that it is the corruption of an old Dutch word. Originally, it meant freebooter or pirate or terrorist.

Senator DOMENICI. Terrorist.

Mr. CUTLER. And the Oxford English dictionary said in modern American idiom it is someone who obstructs legislation. Not delays debates but someone who obstructs legislation.

Senator SARBANES. Well, thank you very much. I think it has been a very important contribution.

And, Mr. Chairman, I must say to you I think this is a matter which the joint committee will need to address in its deliberations.

Chairman BOREN. Thank you very much, Senator Sarbanes.

Mr. Emerson?

Mr. EMERSON. Thank you, Mr. Chairman.

Mr. Cutler, in your prepared statement on page 6 you state that if the Senate can constitutionally require a supermajority vote to cut off debate on a motion to amend its rules, it can constitutionally require unanimous consent to cut off debate on this or any other pending matter. That would mean that any minority, down to a single senator, could constitutionally prevent the Senate from doing business. Do you mean to imply that all unanimous consent agreements are constitutionally suspect?

Mr. CUTLER. No. Unanimous consent agreements are a convenient way of the Senate or the House acting to go forward. But in the House, at least, and in the Senate to the extent that Rule XXII permits, if unanimous consent is withheld there are ways of overriding that and going forward. You have other rules that would permit you to do it.

Mr. EMERSON. As a part of your critique, you did not talk about the practice of holds which can perhaps be an even more pernicious source of delay in the Senate. Because it is based on a customs and informal understanding rather than being strictly routed in the rules. What is your view of the practice of holds?

Mr. CUTLER. I have tried to confine myself, Mr. Emerson, to the constitutional question. The hold, it seems to me is a live-and-let-live way, induced on the Senate side at least by the threat of filibuster, that has delayed the business of the Senate enormously.

And a great deal of it—I have heard others like Professor Smith, who is an expert on this subject of holds, say that it is the price the Majority Leader pays for cooperation. But he among others—Mr. Smith among others, would love to see holds eliminated entirely or certainly at least limited in time from a 1-day hold. A 2-day hold might be appropriate for the convenience of the Senator.

But when they are used the way Senator Helms, for example, is reputed to use them, they are forever.

Mr. EMERSON. I realize there are certain parameters to the testimony that you are giving here today, but given your history and background, it would be interesting to have your commentary on executive-legislative relations. I suppose in the brief time we have here today we could not pursue that very far. But if you would like to submit a statement or give us that commentary, it would be very useful to the committee.

Mr. CUTLER. I would be glad to do that. I am on the side of George Schultz who said that in Washington, trust is the coin of the realm, that everything depends on frankness and trust between the two branches.

Mr. EMERSON. Thank you.

Mr. DREIER. (presiding.) Thank you very much, Mr. Emerson.

Let me pursue a line and shift from the Senate to the House. Most of your emphasis has been obviously on the Senate. But if we take this super majority question further, we in the House have a provision whereby the rules are waived, and we move to the Floor legislation from committees directly, and 146 votes can block that

legislation. It was done last week. And we, after that failure, saw the Chairman and the author of that legislation come just a couple of hours ago before our Rules Committee requesting an open rule to have the legislation considered on the House Floor.

What are your thoughts about the super majority power in the House?

Mr. CUTLER. Well, Mr. Dreier, I think that all super majority requirements, except in the five constitutionally specified cases, are constitutionally suspect. But there is a vast difference between a super majority requirement that delays things for a while and can eventually be overcome by a mere majority, as I believe is almost invariably true in the House, and the situation in the Senate where for more than 100 years, a single Senator could block legislation or even motions to cut off debate, and under Rule 22, either 60 or two-thirds majority are required.

Mr. DREIER. Let me ask you this, then. Do you believe, having said that we obviously can proceed and have a majority make the determination in the House, that we should ever have this provision whereby we suspend the rules and move legislation to the Floor and require a two-thirds vote for its passage?

Mr. CUTLER. No, it seems to me that measures like that, which eventually can be resolved by a majority, are very suitable for expediting business. And criticisms of the House, at least as I understand them, are not that debate is excessive and that freedom of amendment is excessive. If anything, it is the other way around, because of the sheer size of the House and the complexity of its business.

The Senate—well, the Senate I think is still in the 19th century, if Senator Domenici will forgive me. And we are having 21st century problems. What I would like to emphasize the most is not the pros and cons of whether filibusters have been useful or not useful, but that you have a duty to satisfy yourselves that what you are doing is constitutional. Not to face up to that, it seems to me, raises very serious questions as to whether the Senate in particular is performing its judicial functions.

And if it is an issue that we ought to get to the Supreme Court as soon as we can, the only way to do that I believe, would be if the Senate, with the cooperation of the House, and I am sure the House would cooperate on this, would enact a bill waiving the sovereign immunity of the Senate for purposes of a lawsuit to test this issue.

Mr. DREIER. Thank you very much, Mr. Cutler.

Vice Chairman Domenici.

Senator DOMENICI. Thank you very much.

Mr. Cutler, I must tell you, and in a sense I admit my own shortcomings in doing it, I have been in the Senate 29 years, almost, and I have been so busy from day-to-day that I never thought this was the issue you have currently made it.

Mr. CUTLER. You are certainly one of our very best Senators, Mr. Domenici.

Senator DOMENICI. I say that to say next that I don't think I am alone. There have been hundreds of very good Senators who really did not think the issue you raised deserves to go to the Supreme

Court. While I did not study it very hard over the last years, I will in the next month or so.

I believe it is a rule of the Senate and a process of the Senate. I would be very surprised if the Supreme Court took the case. You might think contrary.

Mr. CUTLER. I would be inclined to agree with you, actually. That is why I say it is the duty of the Senate to resolve it.

Senator DOMENICI. My assessment of this in terms of the Senate and my conscience on the constitutionality issue is that I think we have left out one whole part of this. We have left out how much the United States Senate has done with this rule. It isn't as if the people's business has gone for naught.

First of all, we have passed scores of legislation with this rule being there and people haven't even used it. For those who are so fearful that anybody can block it, let me tell you, there better be something very significant if you are going to go through a couple of clotures, you are not going to just block things.

The last one blocked became a very philosophical, ideological issue. It probably was not the \$3 billion that was going to be spent in the first year, plus the unemployment. The President made it bigger, Republicans made it bigger, but it wasn't very big in the first year. We are going to be over on many counts more than that bill encompassed. But it was an ideological issue.

I think it would be interesting and perhaps we should indicate on the record how many cloture positions have been granted. Very, very important. If I were sitting on the Supreme Court and you brought this to me, I would be very interested in determining whether or not the United States Senate did business. And then I would be very interested in whether there was a process or procedure that obviously was used, and that people knew what they were doing and could change their minds about it and didn't apply it as some kind of wooden soldiers against the majority rule.

I think that is the case. It is applied discretely, albeit used more often than before. Eventually it is not something that defeats a lot of major legislation as compared with that which gets through.

All of that means probably nothing if one literally interprets the Constitution that the only super majorities allowed are those in the Constitution. I don't believe that. I don't think I would rule that if I were on the Supreme Court.

Frankly, I don't think they are going to rule that if they ever get the case. What we are really saying is that in some cases, some people don't really like what the filibuster is used for.

I was the one that coined the phrase, when Majority Leader Mitchell denied the President of the United States his economic package, I said, Let the majority be the majority. In fact, I spent a lot of time in my office figuring out what I should say. And it was in response to my admonition, let the majority be the majority, that he gave a rather strong speech about we shouldn't be complaining because we use this all the time, and why shouldn't he? But in much nicer words. So I think it might be much to do about nothing in terms of the Constitution.

And my last comment on it—and I would like your thoughts on it, again, you are a very, very good lawyer, and I am reporting to you as you hear this as a lawyer—it would seem to me that for

your position to be valid, that there would be evidence that the Senate of the United States has never seriously considered changing this rule, and that as a matter of fact they have seriously considered changing it, and as a matter of fact they have changed it. It used to be a much more severe test. And Russell Long and Robert Byrd made a compromise with Senators Mondale and Pearson in 1975, I guess, and we changed the rule, so that fewer votes are now required to close off debate than before.

That makes another case for the fact that the Senate very knowingly has adopted a process and procedure to protect the majority around here that does no violence to the Constitution.

That is far more than I should have said, but your eloquence prompted me to think you might be converting everybody around.

Chairman BOREN. (presiding.) Thank you, Senator Domenici.

Senator SARBANES. Mr. Chairman, can I make a couple of observations before Mr. Cutler departs?

Chairman BOREN. Yes, and then we do have to move on to our panel.

Senator SARBANES. I understand that.

First of all, let me say I in fact think this is much to do about something, not about nothing. I think it is an important issue. The Majority Leader when he appeared before this group in fact pinpointed it. He didn't go anywhere near as far in terms of constitutional theory as Mr. Cutler has done, but he pointed out that the filibuster is now being invoked against the ability of the Majority Leader simply to bring a matter up. In other words, on the motion to proceed to a matter, we now find that being filibustered.

Then when you finally actually get to the matter, you then encounter another filibuster in terms of finally voting on the matter. So in effect you are getting a double filibuster on the same piece of legislation.

I think it is very important because of the question that was asked about the holds, in the article that was in today's paper, to understand and perceive that the enforcement device for the people invoking the hold is the threat or the actual use of the filibuster that is what gives the hold its sort of bite in terms of having to be acknowledged.

You have two steps. As a matter of comity, you probably would acknowledge some holds. You say, we won't take it up today, we will give you a day or two or something of that sort. The holds that are difficult are the ones that hang on and hang on. And what gives those holds their enforcement device is that the people invoking the hold indicate that if the hold is not honored, they will then filibuster bringing up the measure.

So the filibuster rule ties directly into the hold. So to the extent you criticize the hold and its impediment to the normal doing of business, it rests upon the filibuster in order to make the assertion of the hold have some bite as the Majority Leader considers the scheduling of the Senate's business.

Senator DOMENICI. Mr. Chairman?

Chairman BOREN. Senator Domenici?

Senator DOMENICI. If the record does not reflect that I said much to do to do about nothing as it pertains to the institutional provision, that there are only five and no others, then I want to make

that point. I don't think it is much to do about nothing as the Senate lives its life. I think it is very important.

But I think the Senate, when it feels it is important enough, will change it, and frankly the holds are not argument against filibuster. If leadership of this place wants to challenge holds by saying, proceed, I would bet that not one in 100 would mature into a debate beyond one day. But it just turned out that this is kind of double comity. First, it is nice and friendly, and then it is, well, less threatening a filibuster it.

This week if there were threatening filibusters, there is nothing else to do. So bring them up.

Mr. CUTLER. Just let me say, Senator Domenici, in response to your comments about the Senate being able to do business and also amend its rules, of course it is true that a certain number of measures get passed. But it is equally true that more measures die in the Senate than die in the House without a vote, and that for 15 years, 1961 to 1975, the Senate tried on seven or eight occasions to amend Rule 22, and it was never able to bring the question to the Floor for a vote. That is what can be done under the rule as it now stands.

It was even worse before. I agree with you.

Senator SARBANES. As it now stands, you can amend the rule by majority vote but you can't cut off debate to vote on amending the rules without getting a super majority.

Mr. CUTLER. That is correct. And the only rules you have in effect other than provisions that allow a certain number of hours of debate after you cut it off, which are perfectly reasonable, was you cut down the number of votes required to 60 except in the case of amending the rule. That rule, Rule 22, is indeed a Catch 22 and it is being zealously protected.

Chairman BOREN. Mr. Emerson?

Mr. EMERSON. This has been an interesting exchange here. I want to ask you, do you consider yourself a strict constructionist in the matter of constitutional interpretation?

Mr. CUTLER. I don't have that many opportunities. I only argue cases before you. I suppose it depends which side I am on. But on the whole, yes, I am a strict constructionist, and I think that if I share Senator Domenici's doubts as to whether the court will take this case, there is the speech and debate clause, there is the immunity of the Senate as a whole, there is the political question rule. But if they did take it, I would bet a couple of dinners they would hold this rule unconstitutional.

Chairman BOREN. Mr. Cutler, I want to thank you again. You have raised a very valuable point. You have injected us into a debate that I think is extremely important.

Reading those figures that I read in the beginning, we have had seven times as many filibusters per year in the last 20 years as we had in the prior 15 years, and we have had something like more than 20 times as many as we had in the period before that. We really are in danger of fragmenting.

I think we understand in this country, it is one of the things we see in our politics, it is one of the reasons we have had so much gridlock, whichever party was in the White House. It is very hard to form a consensus on anything in this country right now. And I

think it is a tremendous frustration to the majority, and that—I use that term without referring to either Republicans or Democrats or Independents, because what constitutes a majority in this country shifts from time to time.

There is no one who can predict whether doing away with Rule 22 will help Republicans or Democrats, liberals or conservatives, or whatever. But removing roadblocks to coming to a decision where a consensus is reached, it would seem to me that would help us slow down this process of fragmentation in our country. It would slow down—there were those who use the term “silent majority” in past years, the frustrated majority, the real majority of the country.

It seems to me that none of us want the system to be without checks and balances. None of us want to see things rammed through without thorough consideration of possible implications. But we have reached a point, it seems to me, in the legislative process where—there may have been times in the past where the danger was we would move too quickly, and that an emotional majority might run roughshod over a minority, and in time they might change their minds.

But I think all of us have a sense of the American people, and they look at the fact that we have been stuck on high center in Washington for a number of years now, without regard to which party was in the White House. The American people see that at this point in time, with the fragmentations occurring in the country, we are in much graver danger that we are not able to form a consensus, that we are not worried about not having sufficient roadblocks right now.

We obviously have an overabundance of roadblocks. We have seen it frustrate leaders in both parties when they have had the responsibility to get something done.

Mr. CUTLER. Mr. Chairman, if there were no constitutional issue, I agree, I would favor a less restrictive rule on debates than the Senate now has. I think the present rule confers too much power on the minority, including blocking. But there is a Constitution. And I want to appeal once more to the conscience of the Senate. Whether Rule 22 and filibusters are convenient and useful or not is one thing; but whether they are constitutional is something the Senate ought to address. And I just urge that position on you once more.

Let the Vice President get an opinion from the Attorney General, consult the counsel to the Senate, and if they tell you this is at least a substantial question, I would submit the Senate has a duty to vote on it up or down.

Chairman BOREN. You have made that point very well and very eloquently. It is after all—we all swear oaths to uphold the Constitution, and that is a responsibility that no Member of the Congress, no Member of the Senate should take lightly.

We appreciate your being with us today, taking the time to make such a thoughtful and scholarly and thorough presentation of your point of view.

Mr. CUTLER. I enjoyed it enormously. You get more time here than is given in the Supreme Court.

Chairman BOREN. Thank you very much.

We are going to ask our next group of witnesses and our final group of witnesses for today to come forward to the table as I introduce them. Our final panel consists of Former Counsel to the House Minority Leader, Hyde Murray; Former Assistant House Parliamentarian and Former Staff Director to the House Democratic Steering and Policy Committee, Pete Robinson; and Former Secretary of the Senate, Bill Hildenbrand.

We already pressed into service Mr. Murray Zweben in his capacity as former Senate Parliamentarian to help us earlier on in our discussions in an informal away. He first came to the Senate in 1956 as a secretary to the Parliamentarian. he returned to the Senate in 1963 as Assistant Parliamentarian and then became Parliamentarian of the Senate, and has a great knowledge of that body.

So we appreciate very much all of you being here. I think the best way to proceed would be to ask all of you to make opening statements and to share with us your thoughts and those areas you would like us to highlight. We will receive all of your statements for the record, and after all four of you have given your opening remarks we will turn to questions from Members of the committee.

We might as well start in the order in which you are seated. Mr. Murray, we will begin with your comments. We welcome you.

STATEMENTS OF HYDE MURRAY, FORMER COUNSEL TO THE HOUSE MINORITY LEADER; MURRAY ZWEBEN, FORMER PARLIAMENTARIAN OF THE SENATE; PETE ROBINSON, FORMER ASSISTANT HOUSE PARLIAMENTARIAN AND FORMER STAFF DIRECTOR TO THE HOUSE DEMOCRATIC STEERING AND POLICY COMMITTEE; AND BILL HILDENBRAND, FORMER SECRETARY OF THE SENATE

STATEMENT OF HYDE MURRAY

Mr. MURRAY. Thank you, Mr. Chairman, for this opportunity to contribute to the noble effort of this committee to boost Congress, not to bash it.

As I began to collect my thoughts for my meeting with you here today, I turned to the ancient Greeks, and I started with Socrates, and I said, Why was Socrates the wisest of all the Greeks? Because the oracle of Delphi said that "Socrates knew that he knew not." I figured that knowing not was not enough for this committee. So—

Chairman BOREN. It may be a pretty good description of the committee.

Mr. MURRAY. I turned then to the maxim of the Greeks that they saved their greatest disappointments for those who get what they want.

Then I finally turned in ultimate reference to both Lycurgus and Solomon, whose discs lived on the inside of the wall of the chamber of the House of the 23 great lawgivers. We remember how much the legacy of Greece means, because it was from them that we got the word and the idea democracy, and it was democracy that the founders of our wonderful country molded into a democratic republic, where in the arithmetic of Congress, four usually beats three in the House, five sometimes beats three in the Senate, both bodies

find six is needed to beat three on certain occasions, and one beats a million when it comes to the Bill of Rights.

As I understand our sequence today, we are concentrating on the connection between the committee process and the Floor process. And I hope to share with you three ideas that will help the plenary powers in the enhancement of the respect of both bodies of our Congress. My three suggestions are these.

One, there are ways that your committee and later the Congress itself can enhance both the comity and respect for the institution.

And second, there is a need constantly for you to strengthen and support the staff of the Congress.

And then third, there is a tremendous opportunity that is available now to adopt new technology that is coming in electronics and in communication.

First, the Congress-bashing syndrome is in full spread, and you all have heard plenty of it, so I don't need to repeat the evidence. But I would like to leave with you some thoughts and perspective of Congress bashing from the 1990s.

This first is from the 1790s. And that is the time of Thomas Jefferson. I know you have had several Jeffersonian quotes, but I would like to share this one with you, because it came at a time when Jefferson and his followers were being persecuted under the hideous Alien and Sedition Act for the treasonous crime of criticizing the government. And until Jefferson and his party came into power, that had been a felony, it had been a crime.

I won't read you the full quote because it takes some time. We will put it into the record. But Jefferson was accused of such things as murder, robbery, rape, adultery and incest, and one familiar threat here said the air would be rent with the cries of distress, and the soil will be soaked with blood and the Nation black with crime. But Jefferson, while personally hurt by the campaign of smears, nursed his wounds in private. He long since learned that for every lie put down, another rose in its place. And besides, he was committed philosophically to the widest latitude of public discussion on the principle that he had stated in his inaugural address, and that is "error of opinion may be tolerated where reason is left free to combat it." And that is a lot of the Congress bashing has to be taken into perspective from that point.

Also, 202 years later, a wonderful man that many of you probably knew and served with, Congressman George Meader of Michigan, addressed the former Members of Congress at their annual meeting last year, and in that he had one short statement. He said this. "The United States Congress consists of 535 people, just a little community, but in the words of Daniel Webster, there are those of us who love her. This little community has in its hands the welfare of hundreds of millions of Americans living and unborn. Its decisions also affect billions living and unborn who populate our planet. To exercise this awesome power, to discharge this apocalyptic trust, this little community needs all the help, human and divine, that it can get. It needs freedom and flexibility in its operations. Restrictions, limitations, onerous procedures, however meritorious, can not help but impede and obstruct its power, function and inhibit judicious study and wise decisions. Like Gulliver, multitudinous silver threads of congressional reform may immobilize the

jibe. If a legislator can be trusted with a vote to declare war, should he not be trusted with the selection and use of his assistants?"

Of course, the rough and tumble of politics will always be part of a free society. "No heat, no kitchen," to paraphrase Harry Truman. But there is a need to try to breed institutional respect and to bring to the public's attention the enormous historical legacy that this Congress inherited, and the efforts by the human beings that populate it and who are trying to do their best.

Respect, after all, isn't legislated. It isn't purchased. It isn't ordered. It isn't enacted. It is earned. And the one way to earn the public's respect is to do a good job as a Member of Congress, in your office, in your committee, and on the Floor. And that is the charge of every one of you, and I guess most of you are doing it all right because you get reelected and come back here and serve.

Now, specific suggestions we have for you, I couldn't help but thinking over again, as this colloquy went on with the previous witness, particularly with the Senators on Rule 22, what a marvelous tape that would be for C-SPAN in the classroom, for a constitutional law course someplace at a law school in the United States.

So, too, is the capacity for both the Senate with the flexibility of the rules that you have and the House under special orders to pick a subject, to say it is a history of comity of respect and why are people forced to be nice to people they don't really like too well? Why is that?

There is a historic reason for it. And Members of Congress could participate in such a discussion, and then back in the studio, you could have experts and historians, political scientists and others that could augment that discussion, and then use that as a learning tool for the country and for the people, because one of the duties of a good legislator in addition to being a legislator and crusader and provider and all those things is to be a leader and a teacher. And other bipartisan sessions on parliamentary procedure so people understand why certain processes occur. Some of the charitable works that Congress helps do that aren't at all government. Those are the ways you could perhaps use the technology and the forums that exist in the Congress now.

In the second area of strengthening the staff, the staff has taken its share of Congress bashing, and for the most part is defenseless to respond very much to it. It just takes its lumps and lets it go at that. But I confess a bias, having worked in the Congress for a long time, but in my experience the people who work for the Congress, as far as government employees are concerned, are the most dedicated, the most loyal, and the most competent, and the most vulnerable group of government employees in the country. They live under constant insecurity, and they need, I believe, for the Members of Congress to take that into account and to try to provide training and skill enhancement for the staff as much as possible and to be very much concerned about the general level of wellness, and particularly in times when the national health care reform flags are flapping in the air. This is the time for Congress to look to itself for the kind of a model employer that will take care of its own troops.

The next area that I would like to share with you is to adopt the emerging technology. And one that is available already because of fiber optics and because of television technology is the ability to plug each of the committees, each of the other power centers, into some form of a television retrieval system like the Olympics that were held. And you could tune in boxing or you could tune in wrestling or track and field with a special hook up for your television set. The same possibility exists for congressional hearings. And that would then eliminate the need to have somebody filter in the information through for the public. It is certainly part of the power shift, Alvin Toffler describes it in *Modern Times*.

At the same time this neck-tie technology makes available the acquisition of committee reports, of hearings, of hearings, of statements and other materials, many times it could be done with a fee system so that there would be income to the Congress for doing it, as long as you retain every citizen's right to have one free copy of the instrumentation that Congress provides.

In summary, Mr. Chairman, these are just three ideas that I hope you will consider for improving the general respect and ambience of the institution and try to remember there have been 11,000 Representatives that have gone through this institution before you, and some nearly 3,000 Senators, and they have all served their country and tried to do their best that they can, and the ethos that this Congressman represents is captured in the Statue of Freedom which is now down off her perch, but someday when you report your bill they will put her up on the Capitol and we will all live much happier ever after.

[The prepared statement of Mr. Murray is printed in the Appendix.]

Chairman BOREN. Thank you very much, Mr. Murray. We appreciate your comments.

Mr. Robinson?

STATEMENT OF PETE ROBINSON

Mr. ROBINSON. Thank you, Mr. Chairman.

I left the Hill a year ago, but I spend a lot of time talking with people about how it operates. Even basic ideas of the Constitution and our system of government. Many people in the community simply don't understand how this place operates, although they have to know.

That brings me to something that Bill Brown said. One of the best things that could happen here, for Members of the House and the Senate to know more about their own rules and their own system, how they operate, their derivations.

I would suggest that much of Congress' problem with perception is simply a lack of education and knowledge in the country at large. You might—I am not sure this is within your mandate, but a little good PR for Congress would help, and the way to connect with the people, to let them know more about the institution.

Frequently when I talk to business groups about Congress, I quote from historian David McCullough, who at the bicentennial celebration here in the Capitol said, "Congress for all its faults has not been the unbroken parade of clowns and thieves and posturing

windbags so often portrayed. What should be spoken of more often and more widely understood are the great victories won here."

I also think when you talk about reform we have to be very careful that Congress does not dilute its own congressional power and balance with the Executive and to remember the separation of powers.

On the specific subject of scheduling, it has occurred to me that I don't know why we don't have more suspension days in the House of Representatives rather than less. It is an efficient way to do business it. Can fill time. Perhaps earlier House sessions, that is earlier in the day, are a good idea.

I think there has to be a lot more flexibility in how the leadership deals with the schedule, as well as a way to communicate with the Members some degree of certainty about their lives.

Of course, we all know there are limited ways to do that at certain times of the year. Congress often produces best when it is up against the wall.

The idea of Oxford-style debates, I am rather skeptical of myself. I think it would stand a good possibility of disintegrating into a couple of Members talking to each other in an empty chamber. It seems to me the best debates that happen in Congress are usually when a proposal for action is pending, as in the Gulf War, which was a wonderful debate, but it was a proposal for action. I think the Congress does best in that mode rather than as a debating society.

In the House of Representatives in particular, I know a common issue has been the Rules Committee, closed rules, the motion to recommit, and fundamental fairness. I had the privilege of participating in a briefing in the Rules Committee last year on this subject, and it seems to me there has to be a way for the fundamental fairness to the minority to be balanced with a need for the leadership to be able to address major proposals in a prepared way, and that perhaps the minority ought to get its shot in one way or another, either an amendment or a motion to recommit.

We have all seen what we think are unfair rules, and I guess you know them when you see them. But I do think that in any guarantee situation, that the majority leadership has to be guaranteed some kind of notice, and the right to know what they are up against.

After all, a motion to recommit has enormous strategic advantage in that if it is not otherwise dealt with, it could be done with no notice and it can change anything in the bill, even that which has been amended already. So I think there is some requirement for notice in a guarantee situation.

And you could even have a situation where the leadership can suspend consideration of the bill in order to give all Members a look at a motion to recommit.

On the question of referrals, my experience in working with Jim Wright and Tom Foley, this was their biggest headache every single day. It is a no-win situation for the Speaker. He has to pit one Chairman against the other. And committees who become antagonistic towards each other on one issue can have this antagonism slop over into other totally unrelated issues, thereby altering the public debate.

Bill Brown mentioned when they changed rules in the committee reform amendments, they kept multiple referral, but did not make clear dividing lines between committees' jurisdiction. It has occurred to me the way the multiple referral as a rule now written, it gives a presumption towards multiple referral.

It might help to change that presumption and to give the Speaker the tools to make more primary committee assignments while retaining the right to send to other committees for limited periods of time.

I don't think that you can tell the Speaker only to send the bill to one committee always up front, because otherwise creative drafting could give certain committees an advantage all the time.

This whole question of referrals has a big impact on conference appointment. There has to be some way to insulate the Speaker from the enormous cries for appointments on conference bills. And I would suggest that one approach is to limit a trend which has developed of multiple panels for the same committee.

I remember back when we had the banking bill, the Banking Committee had about 15 different panels, and they walked into conference with the Senate, the Senate laid down a substitute for the whole bill, and the House was at an immediate and huge disadvantage.

So I think in terms of referrals and conference appointments, those are areas where the leadership very definitely needs help.

Thank you.

[The prepared statement of Mr. Robinson is printed in the Appendix.]

Chairman BOREN. Thank you.

Mr. Hildenbrand?

STATEMENT OF BILL HILDENBRAND

Mr. HILDENBRAND. Mr. Chairman, I have already submitted a statement and I will not take time to read it.

Thirty years ago the Senate convened almost every day at 12:00 noon. We did the morning business, we did items on the calendar, which there was no disagreement, and at 2 o'clock we turned to the legislation of the day. By 5:30 or 6 o'clock, the day was over and we came back the next day. That was most of the time the way the Senate operated.

I make the observation that the rules of the Senate at that time are no different than they are today. So that it seems to me that, as you mentioned in your opening statement, possibly the rules are not the problem, but the discipline of the Members well may be.

I have no further comment.

[The prepared statement of Mr. Hildenbrand is printed in the Appendix.]

Chairman BOREN. That is a very provocative statement. We will come back to that.

Mr. Zweben?

STATEMENT OF MURRAY ZWEBEN

Mr. ZWEBEN. Mr. Chairman, Mr. Dreier, Mr. Emerson, I have no prepared statement, no panaceas. A number of comments and suggestions.

I didn't start working at the Senate quite as early as Bill did. I didn't get there until 1956. I will agree with something he just said. The rules were the same then. Our society wasn't as complex, and the Senate and the House didn't have as many different things to do.

But the Senate, which can I speak to, was run in a much different way. There was a much higher degree of comity between the Members. I don't know what has destroyed that. I have heard some people comment that maybe TV has been a negative in that regard. Maybe von Bismarck was right: You shouldn't watch laws or sausages being made.

There is not the cooperativeness. And I could see it. I left in 1981, but I could see that disintegrating even before I left, for a number of reasons, and more often than not, these things, as you know a lot better than I, can be determined by the personalities involved, and how people in the leadership view their roles and how they want to get things done.

Back when Bill and I started in the Senate, you had far fewer roll call votes. Why? Because if somebody asked for the yeas and nays, and if Mr. Johnson and Mr. Dirksen didn't put their hands up, you didn't get the yeas and nays. Maybe that was not the way it should have been, but that was one way the leadership worked and kept the Senate from getting bogged down by roll call votes where you have a series of votes back to back, as you well know, and you have five votes that take up an hour and a half, and votes are 93 to 1 and 93 to 4 and votes like that. My view is that that does not serve the Senate well.

Senator Mitchell—and I read his testimony—appeared before this committee back in January, and commented on the package he has put in of a number of perspective changes to the Senate rules, the foremost being, of course, to do away with the two bites of the apple on the filibuster, on the motion to proceed. That has been kicking around for a number of years.

My recollection is that not too many years ago, and Bill, I think, recalls the same thing, we were chatting about it earlier that Senators Byrd and Stevens jointly had put in a resolution that included that—he has got another series of recommendations, all of which I agree with. Why have somebody demand the reading of a conference report if it is available in printed form, and the others—the one that could be troublesome, that may have to be looked at is combining the three parts of the motion or unanimous consent which now used to get to conference, only because the power to name conferees is in the body, not in the Chair, and by unanimous consent the Chair is given that power.

Otherwise, you could substitute names, and I would expect that if that is done, that they will incorporate into that a mechanism so that that doesn't change.

On the cloture itself, I have seen the change and the increase. I wrote the changes to the cloture rule in the late 1970s after the

filibuster on the Natural Gas Act that was alluded to earlier, the filibuster by amendment, which two Senators, following the lead of something they saw Senator Allen do on the Panama Canal treaty, took up, and that of course brought about the changes that were written into the rule in the late 1970s, I think it was 1979, I am not exactly sure of the date, that allows each Senator only two amendments until every other Senator shall have the opportunity to offer amendments and so forth and so on, all rules which I think tightened it up.

But the critical point is—and whether or not I agree with Mr. Cutler is another question, I am not sure I do, I am not sure I don't. I know which way I lean and there is no point in my going into that. That is not a question I am going to decide.

But my sense is, and it has been mentioned here today, and I have seen it written many times, that the purpose of the rule is to give opponents a chance to express their views and not be cut off, not to kill matters. That being the case, maybe the Senate ought to look at changing that 60 votes, after a reasonable time, whatever it decides, maybe down to 55, after five, 10 days of debate, whatever, something that I think should be looked at.

On the scheduling side, you know, that is strictly a function of the leadership, as we all know, and different leaders run it differently. I can remember times when the leaders were a little less concerned about the needs and whims and caprices of their 94—I say 94 because I go back to 96, or 98 colleagues, and they just decided at some point the Senate had to do things, and they moved to get them done.

Filibusters were probably less significant then because there were around-the-clock sessions, and pressure kept on, and sleeping on cots in the hallways. And I am not saying that should be done in every case, but maybe you need a little more of that, I just don't know. I do think a lot of it has to do with the leadership's—the way the leadership decides to run the place, and what they are willing to do.

On the whole question that Mr. Emerson brought up, Bill and I were discussing this before, I remember when the purpose of the whole was not to kill something or to be a prelude to the procedure of a filibuster, but to give people time to marshal themselves and get amendments. It depends on how the leadership plays that.

My own sense of the situation is—and I don't mean to fault anybody—a lot can be done under the existing rules, to corroborate what Bill said, and greatly improve the situation.

That is not to say there aren't some rules that shouldn't be changed, however.

[The prepared statement of Mr. Zweben is printed in the Appendix.]

Chairman BOREN. Thank you very much.

We will turn first to Mr. Emerson for questions.

Mr. EMERSON. Well, I don't know if I have any questions, Mr. Chairman. It occurs to me we have before us here four outstanding witnesses who have spent virtually I suppose their entire lives involved with the House or the Senate. I know three of them very well, have for a number of years. I can almost personally calculate 125 years of experience sitting before us here with these four wit-

nesses. And I think they have made some truly outstanding observations that we must seriously consider.

I know these people, on the one hand, how involved they are with the Congress; on the other hand, they do have some detachment, and have no particular axe to grind but are very concerned about how the rest of the world perceives us, because their life has been spent here.

While the subject of our deliberations here today or our hearings are on Floor debate and scheduling, these witnesses may have spoken just as well to another subject that we will be taking up, which is the public's understanding of the Congress. And I share many of the concerns you have expressed.

Mr. Robinson in particular, I am delighted you are doing what you are in your present life, because, you know, I have been concerned over the years that the lack of knowledge about the legislative process, the system, that school children or even students at the college level have about the Congress. And you are right, the leaders in this country, business leaders, even college professors and media folks, have just such a cursory understanding of what this process and its complexity are really all about. You know, I think some of the ill feelings that are directed toward Congress have a lot to do with the problem of complexity and the lack of understanding.

You know, it occurs to me, you have all made the point about how complex we have gotten, and you are so right. As you know, I had the wonderful opportunity back when some of you were young men, I was a boy here as a page, when you were a little farther advanced in your career, but I really remember Sam Rayburn and Joe Martin so well, and it occurs to me that something like the House bank fiasco, which turned out to be—there wasn't very much there in the ultimate analysis, and I have never seen that reported, but it seems to me that Sam Rayburn would have probably grabbed ahold of that one real hard and said to the American public, Look here, these people are not corrupt, there may have been some sloppy procedure, and there certainly was plenty of that, but this is not a corrupt institution.

And we don't have anyone anymore standing up like I think Mr. Rayburn would have to speak about, as some of you have alluded to, the good that is here also. I think there is a lot wrong, but there is also a lot of good. But discerning between the two sometimes, because of the complexity, is not easy.

So I just want to thank you for the contribution that each of you has made here, and to say that I will look forward to reviewing the transcript before we do our deliberations. And I hope that you all may stand by and be available as we enter the period of our deliberations for future consultation with us, because I think the four of you have just a remarkable perspective, both on the House and the Senate, and you are valuable resources we ought to utilize.

Thank you, Mr. Chairman.

Chairman BOREN. Thank you very much, Mr. Emerson.

Mr. Dreier?

Mr. DREIER. Thank you very much, Mr. Chairman.

I am going to ask you some questions, and I would like to take advantage of all the expertise to which my friend Mr. Emerson al-

luded, and get directly to some of the issues that have been raised over the past several months in our series of hearings here.

First, I would like to ask you, Mr. Hildenbrand, do you think that television has played a role in creating the situation which you addressed?

Mr. HILDENBRAND. Unfortunately I think it has.

Mr. DREIER. Those on television can't hear you unless you take the microphone.

Mr. HILDENBRAND. I was a supporter of the Senate going on television. I am not convinced it is all that bad. But I think when we go into 5-hour quorum calls, and the screen just says quorum call, the average person in a kitchen in Kansas really doesn't understand what exactly is happening during that period of time.

I think it is also true that possibly by televising we have extended the time that Members are in session. If I am a Member from Hawaii, I don't want to go on at 9 o'clock in the morning if I have something that I would like to say.

Mr. DREIER. Thanks for not mentioning California.

Mr. HILDENBRAND. You get a couple of hours' leave there. But I guess, Mr. Dreier, on balance, I would say that the television is probably something the American people should be able to see their government in action. They may not like to see some of the action that they are seeing, but they have a right to see exactly how we operate.

Mr. DREIER. I completely agree with that. In fact, I have a couple of guests here in the audience who have told me they are C-SPAN junkies and they are particularly honored to be here today from Southern California watching this. And they are aware of developments that take place in both the House and Senate because they take advantage of this.

The real question I have is, your statement was pretty direct and it seemed to focus on personalities rather than rules because you said the rules of the Senate are the same as they were when the Senate convened at noon and adjourned at 5:30 in the afternoon.

My real question is, do you believe that over and above this personality question, that television has played a role in extending all of this posturing and the argument that Members of both the House and the Senate don't debate issues, they simply take their texts and get down there and perform before the camera?

Mr. HILDENBRAND. I think the entire media has changed the way the Senate and the House operates. Special interest groups are much more prevalent now than they were 30 years ago. The entire public relations aspect of the press and the radio, television, being able to funnel everything into the homes around the country, are as responsible for this as is anything else. But again, you can't operate in what we used to call the sunset rules. You have to have this in front of the people.

But any time that you have Members whose time is really very, very sacred to them, they now do not have that time. If you look at the schedule of a Member of Congress or a Member in the Senate, they have these cards, and everyone carries them around in their pocket. I am sure you have one here. There is no way that you could do what is on that card and still be as effective as you would

like to be in understanding the legislation that may be on the Floor of the House or the Floor of the Senate.

And so how you can measure your time differently, I am not sure how you do that. But that is part and parcel of it.

We talked a little bit about committee assignments. I indicated in my written testimony that the rules provide that you are entitled to two class A committee assignments. Now, if you only had two, you would be a lot better off, because then you could go to those committee meetings and the committees themselves could schedule things a lot better than they can.

But if I remember the Majority Leader's testimony, he said at the present time we have 30 Members who have more than two class A committees. That is over the limit that would be provided by the rules themselves.

All of that takes time. And it takes Members' time. You have constituents services and interests that you need. It is very, very difficult to be a Member of Congress now and to be able to give the kind of time that you would like to give to the issues that are before us.

Thirty years ago that was not the case.

Mr. DREIER. Let me ask a question of all four of you. It relates to the 14 proposals which have been submitted to us by the Congressional Research Service. I suspect all of you have had a chance to at least see those proposals that have come here for structural reform of the committee process.

But the thing that really piqued this question for me is the question is—I understand Mr. Hildenbrand has prepared text that refers to this—Senator Kassebaum has initiated a recommendation calling for folding the appropriation into the authorization process. I would ask each of you to comment on that proposal, if you would, because it is one that happens to be, from what I observed, gaining a great deal of attention and interest on the part of a number of our colleagues.

Mr. Zweben?

Mr. ZWEBEN. I followed and read that proposal by Senators Kassebaum and Inouye. It makes a lot of sense to me. You get into that kind of thing, and you are running into what has always been a problem with reorganizations, quote, "jurisdictions."

That always seems to me, and I have watched over the last 35 years a number of these, recommendations coming back, and to me a lot of the good that might have been done has gotten broken down by the jurisdictional questions. Jurisdiction is power.

I can remember when Mr. Nixon was President early on in his Presidency, he sent a measure up, and Bill probably remembers this, maybe some of the others, that would have reorganized the Executive Branch and boiled things down functionally among the departments by natural resource and so forth and so on. It went to committee in the Senate. Hell, it never got out of committee in the Senate, because—and I heard all the comments, because of the kind of thing I just said.

Let me add one thing. I didn't mean to imply when I spoke earlier that I was against televising any congressional proceeding. I fully agree that they should be.

Mr. DREIER. No one has recommended that we turn the television off of the House and Senate.

Mr. ZWEBEN. It just dawned on me what I said might have been interpret that had way.

Mr. EMERSON. If the gentleman would yield, let me say I think C-SPAN actually helps the educational process. I hear countless scores of citizens saying, What I really like about that is I can watch it and make up my own mind, and I don't have to have someone telling me what I have heard.

And another thing, if you are interested in the procedure, they will even sell you a little book that tells you what the rules are, you know? There is a number you can write to and send so much money and get a book on how Congress operates, so you sort of have a scorecard as you are watching Congress on C-SPAN. I think that is a very, very healthy educational experience.

Mr. DREIER. I am still trying to pursue this appropriations thing. One of the things we found out about television is that it clearly is a two-edged sword for those of us who like to stand in the well of the House or Senate and talk about issues, it can often be less than beneficial to the political fortunes of some.

Mr. HILDENBRAND. As the Chairman knows, back in 1984 I had a proposal in which I did the reverse of what Senator Kassebaum does. I made a major Appropriations Committee of some 50 Members and I took the Chairman and Ranking Members of all the legislative committees and put them in the Appropriations Committee.

I must admit that Senator Kassebaum's proposal makes a lot more sense, simply from a jurisdictional standpoint, because it is easier to take the Senate committees in place now and simply add a subcommittee that deals only with appropriations.

The value of this is that we get away from—and it was mentioned earlier today—spending 3 weeks debating whether we should have a B-17 on the authorizing legislation, and then 2 months down the road we spend that same 3 weeks debating whether or not we should spend the money for the B-17 that we just debated 3 weeks prior to that.

So that is one way of getting at single issues and only debating them once.

You also get away from—or the other possibility would be a 2-year budget cycle, which I think Senator Ford has advocated in the past, and that would simply be for the first 12 months of a legislature, you simply authorize. For the next 6 months, you appropriate. And then, as Senator Baker calls for a citizen legislator, you can go home in the beginning of July and try to find out what the people back in your State are thinking about issues, either of those proposals.

But I do think Senator Kassebaum's proposal, whether you can ever get it done or not, deserves the attention of this committee.

Mr. DREIER. Hyde?

Mr. MURRAY. I would add a dissident note to that and throw in as a background, in House Rule No. 10, clause 1, there is a history of the Appropriations Committee, and somehow the republic staggered on from 1789 to 1865 without one. There was no Appropriations Committee in the House at least until 1865, and then, in

1885, they lost some of their jurisdiction. And then in 1920 their star rose again. And since 1920 the Appropriations Committee has been the keeper of the purse and the keeper of the money.

Now, the danger in abolishing the Appropriations Committee or combining it with a legislative committee is that, in many cases, the legislative committees are parochial. And there—the Agriculture Committee where I worked for a long time, believe me, is very interested in agriculture. And you give them the money and the authority both, and they are going to be very generous to—

Mr. DREIER. Wouldn't they be forced to make tough choices, though, if they are in that position? Say we had a stronger Budget Committee. Of the three-step process, if we were to merge appropriating and authorizing and had a tougher budget there, then wouldn't—I mean they would not have an unlimited amount of dollars to appropriate through the agriculture programs in the country.

Mr. MURRAY. That is possible, if you have some check on the local generosity. The Veterans Affairs Committee is going to be very generous to the veterans. And if they get the purse in addition to the authority, they will exercise that purse quite generously, the Banking Committee and so on.

So if you have a strong Budget Committee or a strong leadership entity that is a check on that that restrains their generosity in providing benefits, there may be some more merit to the appropriations process. But, as Joseph Cannon said, the purpose of the Appropriations Committee is to not to appropriate. That is why he was on that committee, was to hold down spending and to restrain spending and to be a check on the legislative generosity of the other committees.

Mr. DREIER. Pete?

Mr. ROBINSON. I think I am with Hyde, though I am not quite sure.

First of all, on committee jurisdiction, I echo what Murray says. When you take that on, you have a bear by the tail, and that is something I think which has to be planned long term, and it has to muster support from the outside or else it will fall apart because it is power, it is turf, it is established interests out there who know who they deal with and have expectations and have, well, in a way, protections.

As to actually merging authorizations and appropriations, it makes a great deal of sense if you look at what happens around here, the fact that so few authorizations actually get through, with the notable exception of defense and a couple of others. I kind of think it will make appropriating more difficult. And I am not sure exactly why I think that, but I think if the appropriations function is spread around in disparate committees that there will not be an overall sense of appropriation levels. And splitting them up in the way it is done with 602 allocations in the Appropriations Committee, I think you might lose some control. But I think it is a close question.

Mr. DREIER. Thank you very much.

Thank you, Mr. Chairman.

Chairman BOREN. Thank you very much.

Mr. HILDENBRAND. May I make one comment, Mr. Chairman?

Chairman BOREN. Mr. Hildenbrand.

Mr. HILDENBRAND. And I don't mean to lecture the committee, but it seems to me that if the committee takes all of the proposals before it and sits down and decides which one of these proposals can we get through, I think you will do a disservice to the process. Because it seems to me if this is going to be a meaningful committee you are going to have to look at everything and decide among yourself this would be good for the institution if we could do it. And then go ahead and do it.

Now, you may not get it done, but I think if you take—and all of us have been in the same position. I doubt very much if we would say that you are going to be able to do hardly anything at all.

But that is really not the issue. The issue is that you have been charged with a mandate to present what you think is the best way to make the body more efficient and more effective, and I think you should proceed on that basis. The proposals of Senator Kassebaum probably may not go, but if it is a good proposal then it seems to me it should be something that this committee should deliberate and possibly recommend.

Chairman BOREN. I appreciate the comments you have made. I have said in the beginning that, as far as I am concerned, I don't want to preside over just offering a few cosmetic changes that would be easy to pass and that won't make much difference. I would rather see us fail in a noble effort than to succeed at what are not worthy of the word reform.

Now, having said that, my choice is to succeed in a noble effort, and I think that certainly where we will start, as we begin our deliberations, is with what ought to be. Then we can try to overlay reality with it in terms of what we think is possible. And then our job will be, I think, to push that envelope as far as we can possibly push it and err on the side of taking some risks. I would rather ask for more and risk defeat than not ask for much. And I think there is some balance here to be struck.

I want to come back to Bill Hildenbrand and what you said about the rules being pretty much the same but the place operates very differently than it did, say, 30 years ago. And it certainly seems to me it operates differently than when I got here 15 years ago. There is not as much comity. I have—for example, the partisanship has just increased beyond belief.

Mr. DREIER. Not on this committee.

Chairman BOREN. Not on this committee, but I, for example, have never campaigned against a sitting Senate colleague of the other party. I am told that in earlier years that was the practice. Mr. Mansfield and others believed very strongly that you should never go to another State and campaign against a sitting colleague because they are in a different party. I have never done that.

As far as I am concerned, I won't ever do it until the day I leave the Senate because I believe that not only—now, an open seat, yes, I will campaign for candidates for my party in an open seat. But how in the world you can have comity in a committee where the Members are out campaigning against each other and using inside information, so to speak, or informal conferences they may have had on that committee and be able to work together, I don't know. How you put that genie back in the bottle, I don't know.

Maybe I am the only Member of the Senate left that follows that policy. I am sure there are not very many, if any.

We are working on the budget right now. And one of the things that really concerns me, some of us are trying to work in a bipartisan fashion, and the Republicans that are talking to some of us that are Democrats are being told by fellow Republicans let's take a pledge not to talk to Democrats. We are being asked by some Democrats not to talk to Republicans. If we are to reach common agreements on budget, my goodness, if we cannot talk to each other, get together and solve something on the country's problems, we will never get anything done around here.

I don't know what the answer is. We looked at those cloture votes, for example. The rule has not changed that much. Yes, there was the one adjustment of going from two-thirds to three-fifths.

Mr. ZWEBEN. Part of the time, Senator—there was a period before it was two-thirds that it was three-fifths.

Chairman BOREN. It was three-fifths before.

Mr. ZWEBEN. For a period of about 10 or 12 years.

Chairman BOREN. Exactly. But even with those changes in rules you don't see the sharp change in the use of the filibuster or the cloture votes. You see that, really, as we have gotten into one issue, politics, as we have gotten into a different kind of operation where every individual Member of the Senate is doing his or her own thing, appealing to his or her own constituency, raising money in his or her own way, and really a lot more concerned with building relationships between certain constituent groups, many of them splinter groups, than they are in really helping make the institution work to reach a consensus to solve a problem.

So you have the Senate in its fragmentation, the House in its fragmentation, is a mirror of the single issue sort of splintering out in the country, and how we pull that back together, I don't know. But I wonder about this. If we really could get back to at least perhaps fewer committee assignments, sticking to that, if we could really have two major committees to serve on and maybe not more than four subcommittees total—I mean, we have almost 300 committees and subcommittees now. The jurisdiction is very overlapping. Members' time is very fragmented when you are serving on 12, let alone over 20, as some Senators are.

It seems to me, also, we have less relationship between Members, even from the time that I came here. The first few years I was here it was fairly easy to talk to another Member about an amendment, say you wanted to offer. Now it is very difficult, partly because of schedules. More and more meetings seem to be going on, more and more subcommittees are active, and we have more and more staffers.

This may be an unpopular thing to say to former staff, but, to me, now when you go up to a Member and you say I would like to talk to you about this proposal on the agriculture bill, the first thing the Member says to you is who is your agriculture staffer? My agriculture staffer is this person. We will get to two of them to talk and so on.

The ability to have a conversation and really talk legislative language or legislative proposal with fellow Members is—really, it is sinking all the time.

I also find, in fact, sometimes the growth of staff makes relationship between Members difficult. Because staff members are often more intense about holding their own boss's position on an issue. If the two bosses can sit down, the two Members, and negotiate something out, they could probably have a meeting of the minds a lot better than if you leave the negotiating process to staff who don't feel they have the leeway to give in on some point that they know the Member has made.

So I look at this. And if you look at where Congress has gone—let's set aside the partisanship, which I think is one of the most severe problems of this institution and those that want to serve the country, I think that is a slight priority over serving a party—should be a major priority over serving a party.

The fragmentation, going from 36, 38 committees, subcommittees almost nonexistent up to close to 300 committees and subcommittees, Members serving on more and more of these committees, staff being given to virtually every subcommittee—and it is a good way if you want to vote for leadership. Get your own subcommittee and an additional two or three staffs and then you have staff members and then you have hearings to show that the subcommittee has a reason for existing and then you have bills to have the hearings on and then you generate more mail and you fragment our time more and you make it more impossible. And it seems to me what we are doing is more and more about less and less.

And when you get into the major issues of the day, whether it is education policy or getting the budget deficit down or some principle of national security issue, we have less to say about it, less power even in presenting our case or getting the executive branch to meet us halfway on our attitude. Certainly not nearly as much influence as when you had people like Rayburn and Johnson and other leaders interacting with the White House and other giants on the Republican side as well.

We have denuded our leaders of the power as well. The caucus has become supreme over the leaders, so the leaders feel they don't have a right to negotiate on behalf of the Members.

Do you agree with my perception that we would be better off if we had probably some more power for our leaders, some fewer numbers of committees and subcommittees, less assignments, so that Members really became specialists and also really would have more of a working relationship with each other? And if we did away with unnecessary subcommittees and reduced committee assignments, we probably could begin to deal with—and I don't think you could ever—I am not talking about drastic. You could not go back to 2,000 staff like we had in 1948. Things are too complex.

But I am not at all convinced that if you cut the staff by 25 percent, if you scale down the number of committees and subcommittees and assignments and the rest of it, that we would not reduce the amount of self-generated work and that we might not create an atmosphere in which we would relate to each other better and have more opportunity to relate to each other and that we might begin to build back some of the comity that is missing.

So that is a kind of radical feeling or statement, especially to those of you who have spent so many years serving on staff. And it doesn't denigrate staff. There was a time we didn't have the neces-

sary minimal staff. But I think we have gone beyond the bounds of return. Sometimes fewer can do more than many, and I think that is true in terms of the number of committees, number of assignments we have, number of staff we have and that some reasonable scaling back might enable us to do more. Some companies in the private sector have found that out.

Let me ask you to respond briefly, and we will wrap up.

Mr. MURRAY. I lived through the change of life. In fact, I have lived through several changes of life, I guess, but I was on a small committee staff and then the large explosion occurred. Subcommittee staffs became autonomous and not under control of the Chairman or the Ranking Member. And then the alphabet soup group appeared, with CBO and the rest of them, OTA, and all those. And then the LSOs arrived on the scene, all these different caucuses and groups, and the committee influence was diluted.

I would hope your committee would aim at leaner and meaner committees but vest in them the expertise and the persistence and the experience and the training so that they will be top-notch competitive with the Department of Interior or with the Internal Revenue Service or anybody else so that Congress has at its disposal a high-quality staff that has the authority to act.

Also, from the school of hard knocks I would leave you with this thought. That if you make a change like this, please make its prospective—because if you make it happen right away, the immediate anxiety of everybody that is there is heightened to frenzy levels. And if it is going to be vested in some future time, then an accommodation can be made and people can adjust to find other jobs and to be better located.

Chairman BOREN. I have a feeling, interpreting what you have said, and it goes along with I believe, what I think, and that is that if you have fewer subcommittees and you brought the staffs back under the direction of the standing committee, the Chair and the Ranking Members of the standing committees, you could probably do with a somewhat smaller staff. You could retain and intensify use of highly qualified staff. And that you could also have a more—

In the Intelligence Committee I didn't have any subcommittees, and we had a unified staff. In fact, we had a unified bipartisan staff, except for two individuals, one designated for each party. Everyone else was what I called a unique thing. It was an American staff, which seemed like an odd idea to some people—not to me. But it worked.

And if you have only so many hours a week to give to your committee business, seems to me so much better that the priorities be set in terms of the full committee as to what is really important. And if I had nine subcommittees and we were going to divide up to say 15 hours of time that Members have and let everybody—what might be the first priority for one subcommittee might be the seventh priority for the whole committee when you consider how much time and energy and efforts and staff you have to devote.

So that, in a way, is what you were saying.

Mr. MURRAY. With one extra thought, and that is that the core of the legislative process rotates around the committees, where the investigations are done, where the studies are done, where the leg-

isolation is approved. And the House and the Senate, for the most part, ratify or reject the fruit of the labor that the committees do.

And the House should have a chance for major amendments and all, but to think the committee of the whole should be a super committee that second-guessed every committee is silly. The bulk of the work has to be done where people know what they are doing.

Mr. ROBINSON. Well, I agree with everything you have said, basically, and I would add that you need to do something about multiple referrals, overlapping jurisdiction, consolidating committees. I mean, there is just staff bumping into each other all over the place, and there are staff who are there for the sole function of protecting turf, and that would help a lot in that regard.

Leadership authority—more leadership authority, I think, is essential. One of the reasons the committees have gotten so large in the House is that is one of the only things the leadership has to hand out to Members. And if they have other authority in other ways and more control than that is no longer a guiding force.

Chairman BOREN. Right.

Mr. HILDENBRAND. Since the days of Senator Mansfield and Senator Dirksen, the power of the leaders has gradually been reduced as each new leader took office.

Senator Sarbanes talks about holds and the threat of holds. There is nothing in the rules about a hold. There never has been. Holds were something that were just granted by the whim of the leader if he wished to honor that hold. But now it is to the point where almost every bill that comes out has a hold.

Back years ago, on the Republican side, staff used to be able to call up and put a hold on a bill. We finally said from now on we want a letter, and I think until this day they require a letter be sent by the Member to get a hold.

But, basically, the leader does not have to honor that hold. He can simply go to the Minority Leader and say we are going to have to take this bill up and then go ahead and take it up. If a Member wants to filibuster, he is going to filibuster whether you honor his hold or not.

Now, how you give some of the power back to the leaders is within your caucuses to do, but in order for this, the body, to be effective, you are going to have to give back to the leader some authority. We talked about the life and the goodness of the life in the Senate. If you don't know what is coming up or how long you are going to be in session or what days you are going to be in session, you are not going to have very much of a life.

The beauty of the House is that you get a whip notice on Friday and it tells you pretty much what you are going to do in the next week and it does not deviate very much, so that—we cannot do that in 2 hours, let alone a week.

So those are the kind of things I think that need to be addressed.

In terms of the staff, Senator Boren, the Members did this to themselves in the Stevenson-Brock era of 1976, when we said you all need expertise on the committees on which you serve. So rather than take it out of your clerk hire, which you do not have very much of, we are going to give you an extra \$50,000 for each committee on which you serve to hire a staff person. If you are on two committees and we had 100 Members, you added 200 staff. Now,

you have folded it into your clerk hire so now I don't have any idea what you are using it for.

But it is that kind of thing that has caused the increase, and it takes up a lot of the Member's time. As you point out, you cannot talk to a Member about something because, in most instances, he has not even had the time to focus on the issue on which you are discussing with him. And that is why he simply says talk to John. Talk to John because that is all John has been doing is working on that.

Chairman BOREN. And the number of committee assignments that you have also makes you even more subject to doing that. If you are trying to be a Member over five committees instead of two, and eight or nine other subcommittees, there is no way in the world—so you have to have all these people to keep up with what is going on with all the additional assignments you have.

Mr. HILDENBRAND. Now the vote comes up and you are supposed to know what that vote is all about, and that is very, very difficult.

Chairman BOREN. Any thoughts on how we can repair the drift toward partisanship? Any thoughts on that?

Mr. HILDENBRAND. That is just a passing thing right now. When you change administrations, as we have done in this case, you will have a tendency to get into a very, very partisan operation.

Chairman BOREN. It has been pretty partisan really for the last dozen years or so. It was partisan again when we changed to Bush even though you were just changing from Reagan to Bush, and we had the same sort of standoffs and gridlock. And now we are still having, even though in theory—

Mr. HILDENBRAND. That is the nature of the beast, Mr. Chairman. It is a partisan—it is a partisan body.

Chairman BOREN. More so than it used to be.

Mr. HILDENBRAND. But that, again—

Chairman BOREN. The comity, as you said, is breaking down.

Mr. HILDENBRAND. The Members themselves are making that. There is nothing.

Chairman BOREN. Making that decision.

Mr. HILDENBRAND. There is nothing within the rules or the procedures that lend themselves to partisanship. It is whether or not Members themselves want to be partisan with each other.

Mr. DREIER. Mr. Chairman.

Mr. HILDENBRAND. It is true the comity is not there. It was 15 or 20 years ago.

Mr. DREIER. Mr. Chairman, I would just add that from the House perspective the main reason for it is an extraordinarily high level of frustration.

I was born in 1952. It is the last time we elected a Republican House of Representatives, and the case we make consistently is that sitting on that Rules Committee, that leads to frustration. We have just started with a couple of open rules for the first time this session or in this Congress, and I think that that kind of hegemony has played a role in these problems, and I would think that it could be cured by changing the majority status in both Houses of Congress, if only temporarily.

Chairman BOREN. Well—

Mr. HILDENBRAND. We did that.

Chairman BOREN. We tried that on the Senate side.

Mr. DREIER. That is why I say both Houses, Mr. Chairman.

Chairman BOREN. Well, I am not sure it altered the long-range trends very much or caused people to be more restrained.

Mr. DREIER. We have not been given a chance in the House.

Chairman BOREN. Mr. Zweben.

Mr. ZWEBEN. I think your thinking is right-on the right track, Mr. Chairman. I said earlier—Bill said the same thing—you recognize it. Something has to be done about restoring comity. How you do it, I don't know.

I would like to also correct a misstatement I made a few minutes ago when I broke in.

The vote on cloture was changed in the Senate, I think from 48 to 58. It was what is referred to as a constitutional two-thirds and then went back to a straight two-thirds.

Chairman BOREN. Went back to a straight two-thirds, right.

Mr. ZWEBEN. Right, went back to a straight two-thirds.

Chairman BOREN. As has been said by others here, this has been very helpful. I want to thank you all very much.

This institution has been nurtured and preserved along the way not only by the Members who have served here but it has certainly been preserved by Members of the staff and especially those who have devoted a good chunk of their lives to serving here and have helped develop institutional memory and have carried on a sense of continuity as Members have changed.

It has been a very, very important contribution, and your perspectives are very, very helpful to us, and we hope to have an opportunity to continue to call on you as we work through our deliberations. But the answers are not easy. I think we all see what the problems are, and some of them may be beyond our power because some may reflect changes in the society as a whole and pressures that come from without on the institution.

Undoubtedly, that is part of the reason why things have changed. It seems to me there are a lot of institutional changes that could give us a tool that would at least help us or help us minimize the kind of impact of these outside forces. We are going to do our best to do that, and we thank you very much for helping us.

We will say we will resume again on Thursday, our discussion focusing on Floor procedure. Several Members of the House will testify, and then we will have one more hearing on this subject next week.

Again, we thank you for coming, and we stand in recess.

[Whereupon, at 5:30 p.m., the committee was adjourned.]

FLOOR DELIBERATIONS AND SCHEDULING

THURSDAY, MAY 20, 1993

UNITED STATES CONGRESS,
JOINT COMMITTEE ON THE ORGANIZATION OF CONGRESS,
Washington, DC.

The committee met, pursuant to notice, at 10:04 a.m. in room SC-5, The Capitol, Hon. David Dreier (vice chairman of the committee) presiding.

Mr. DREIER. The meeting of the Joint Committee on the Organization of Congress will come to order. We are going to be continuing our series of hearings today on the issue of floor procedures.

We are very fortunate to have as our first witness, the chairman of the House Rules Committee. He has been a member of the House since 1972, representing Massachusetts. He has been chairman of the Rules Committee since 1989.

With the exception of the second panel today, we have a series of very impressive witnesses who will be testifying before us. Having taken a look at the testimony that is being provided by the second witness, Chairman Moakley is referred to as the best chairman in the Congress. So, there is little more that I can say, other than to say it is a great privilege to have Chairman Moakley testifying before us. We are anxious, and look forward to your testimony.

STATEMENT OF HON. JOSEPH MOAKLEY, A U.S. REPRESENTATIVE FROM THE COMMONWEALTH OF MASSACHUSETTS

Mr. MOAKLEY. Just give me a list of those open rules you are looking for, David.

Mr. DREIER. Thank you, Mr. Chairman.

Mr. MOAKLEY. Mr. Chairman, it is a pleasure to appear before you. It is also very much a pleasure to sit with you on the committee. I mean that. You are a very dedicated person. Although, we may not agree all the time, we can disagree without being disagreeable.

It is nice to see my friend, Mr. Emerson.

I'd like to thank the Joint Committee for the opportunity to appear before you today, and talk about the committee and the floor procedures in the United States House of Representatives. Of course, as chairman of the House Committee on Rules, I am the obvious spokesperson for the procedures by which bills are considered in the House.

But, I don't come before you today to blindly defend our current practices. Rather, I view this as a very valuable, and very essential opportunity to take an objective, critical look at our rules and pro-

cedures, and to comment on what areas might be possibly improved.

Before getting into specifics, I would like to briefly express my gratitude to the Joint Committee for the work it has done to date. I commend this committee for both its diligence and the seriousness with which it has undertaken its work. Yours is far from an easy task. I know that.

As you all know, change is always difficult, particularly when it is uncertain whether the proposed changes will actually improve the status quo. I can appreciate the enormity of your assignment. I hope that my comments today assist you with your comprehensive evaluation of the institution.

Reflecting upon the atmosphere in Congress of late, I must confess that I am almost relieved that we have finally reached this juncture. It is time for us to confront our problems, either real or perceived, and resolve them one way or another.

In my 21 years in Congress, I have never experienced partisan tensions as aggravated and sustained as they have been over the past couple of years. While a certain amount of the sparring between the parties is unavoidable, even healthy, I believe we have far surpassed the level of disagreement that characterizes a healthy democracy.

I am most concerned with the element of distrust that seems to pervade our daily interactions. We just can't do our jobs well if we distrust those with whom we work. We all were sent here to make sound, well-reasoned policy decisions on behalf of our constituents, our country and the world. I am deeply concerned that the public good is being compromised in the conflicts of our rival parties.

It is out of these concerns, Mr. Chairman, that I admit certain changers are needed. On the procedural front, I think I can recommend several improvements which will not only enhance the quality of deliberation in the House, but also lessen some of the partisan jealousies that arguably consume too much of our time and too much of our energy. As I have not shared my ideas with the Speaker, I in no way wish to imply that my remarks today represent the sentiments of anybody in the leadership.

First, I'd like to note the Democratic leadership's recent efforts to allow for open, inclusive debate. By inclusive I mean providing for the greater participation by both the majority and minority. The views of the minority are a vital component of the legislative process, and within reason, should be accommodated.

I say within reason because underlying the legislative procedures of the House is the general principle that a determined majority of members should be able to work its will on the floor without undue delay by the minority. While House rules and procedures generally recognize the importance of permitting any minority, partisan or bipartisan, to present its views and prepare alternatives, the rules do not enable that minority to filibuster or use other devices to prevent the majority from accomplishing its objectives in a timely manner.

I think everyone would agree that it is the prerogative of the majority party leadership to both set the legislative agenda, and to provide for the orderly consideration of legislation in the House. While the role of the Rules Committee is to try to facilitate the

leadership's legislative agenda, its power is not without limitation. The Rules Committee can only recommend special rules to the House; it cannot impose its recommendations on the membership. It is for the House to decide by majority vote, whether it is prepared to accept the ground rules, including any restrictions on amendments that the committee proposes.

The Rules Committee structures its rules based not only on the view of its members, but also on its perception of what a majority, what 218 members of the House, is prepared to support. Ultimately, the House agenda is subject to control by a voting majority. As you know, this majority is not static, nor is it strictly partisan. Rather, it is continually shifting, and must be constructed and re-constructed from one issue to the next.

Unfortunately, bare statistics do not always reflect the considerations behind the types of rules reported by the Rules Committee. The first 10 rules reported by the Rules Committee in the 103d Congress were, indeed, by definition restrictive, that is providing certain limitations on the number or types of amendments that could be offered. But while my friends on the other side of the aisle suggest that their amendments were arbitrarily rejected by the Rules Committee, this simply is not true.

Before condemning the Democratic leadership as callous or insensitive to the ideas of the minority, one must examine the nature of the bills and the types of amendments offered. Interestingly, of the 10 examples cited by the Republican Leadership Task Force on Deliberative Democracy as egregious examples of the Rules Committee unreasonably denying amendments for floor consideration, the first five amendments were not even germane to the measures being considered.

It is common knowledge that House rules and precedents require all amendments to be germane to the text they would amend. Therefore, I see nothing unreasonable about the Rules Committee's decision not make these amendments in order.

Moreover, another two amendments cited by the task force would have been subject to other point of order. In sum, seven of the 10 amendments cited by the task force would not even have been made in order under an open rule.

As for the restrictive rules that the Rules Committee has reported to date, let me say that the baseball season is only one month old. Just because the Tigers are leading, doesn't meant they are going to win the pennant. In other words, be patient, I think you will see change. There is no rigid program governing the types of rules to be reported by the Rules Committee. Rather, each rule will be determined on a case-by-case basis.

As you know, the Rules Committee recently reported open rules on three bills. Nobody should be surprised when such contentious issues as reconciliation and campaign finance are considered under structured rules. As the House moves further into its legislative season I anticipate more open rules being reported by the committee.

Another change I would recommend relates to the motion to re-commit. The change would arguably strengthen the minority's ability to act as a constructive partner in the development of legislation. I endorse a modification of the plan proposed by Tom Mann

and Norm Ornstein in one of the earlier reports to the Joint Committee.

I propose an amendment to House Rule XVI, clause 4, so as to guarantee the minority a motion to recommit, with instructions, whenever a special order reported by the Rules Committee precludes the minority from offering amendments in the Committee of the Whole.

This right would be subject to a couple of conditions. First, the motion would be guaranteed only if offered at the specific direction of the Minority Leader, or his designee. Second, on receipt of the motion, the Speaker would have the power to postpone debate and votes on the motion and final passage for up to 2 hours.

I consider these conditions to be reasonable as they would allow a vote on its position on major issues, and at the same time allow the majority a reasonable amount of time within which to prepare its response to the minority's alternative. Theoretically, limiting control of the motion to recommit to the Minority Leader, or his designee, would ensure that the motion would be used in a serious, constructive manner. Members with fringe views would be unable to make frivolous motions.

The third change I would recommend involves clause 2(1)(5) and (6) of House Rule XI, which respectively provide for a 3-day period within which members may file supplemental, additional, or minority views to be included in a committee's report, and an additional 3-day period for members to review the committee report before the measure is considered by the House.

In his recent statement before the Joint Committee, Mr. Solomon expressed concern that the opportunity for members to review committee reports was too often being waived due to scheduling considerations. Let me say I empathize with Mr. Solomon, and hope that my plan alleviates some of his concerns.

My proposal tries to balance the legitimate need for flexibility in scheduling legislation for floor action with the important right of members to express their alternative views, and to review committee reports prior to debating a measure on the House floor. I don't believe the rule, as it is presently written, allows us to use our time effectively.

Presently, the 3-day period for filing views begins to toll the day immediately following the day on which a committee orders a measure reported, and expires at midnight of the third day. Since, presently, there is no automatic authority for a committee to file immediately on the expiration of this third day, it may be another day before the committee files its report, and yet another day before the report becomes available in the document room. Only then will the 3-day layover period for members' review of the report begin. Thus, more than 2 weeks may go by before a bill becomes available for floor consideration.

So, in the interest of both preserving this important right and using our time well, I would recommend the following: Tighten the way in which the 3-day period for filing views is calculated by starting the clock tolling immediately upon a committee's ordering of a bill reported. Often many valuable hours remain in a day on which a bill is ordered reported. Additionally, I would recommend

giving committees automatic authority to file until midnight of the third day.

These changes arguably would achieve the dual goal of allowing for efficient scheduling of legislation, and ensuring an adequate period for members to file and review their views. While the Committee on Rules would still reserve its right to waive the 3-day lay-over requirement, I believe that if these changes were to be made, the need for such waivers would be significantly reduced. In fact, I think it is safe to assert that had this proposal been in place earlier in this Congress, none of the waivers of the 3-day layover period granted by the committee would have been necessary.

My final recommendation is that the House, in some manner, implement the Oxford-Union style of debate, as proposed by Norm Ornstein and Tom Mann. Such a program strikes me as a useful vehicle for conducting thoughtful, substantive, and balanced debate on important national issues. Unlike the one-minute special orders which tend to be one-sided monologues, free of contest or rebuttal, such a program would allow for a meaningful exchange of ideas between members. It would also serve as a valuable supplement to our regular debate time on major legislation.

In closing, I would like to add that I agree with the prevailing sentiment that procedural or mechanical changes alone will not cure the ailments of this institution. Attitudinal change is as important an ingredient. I am encouraged by the progress that is already being made in this area, and I hope that we can sustain this spirit of cooperation throughout the 103d Congress.

Again, I thank the members of this Joint Committee for the opportunity to testify. I know you have a very, very difficult job.

At this time, I would be happy to answer any questions that I can.

[The prepared statement of Mr. Moakley is printed in the Appendix.]

Mr. DREIER. Chairman Moakley, we appreciate your testimony. It is very helpful.

Some might argue that it would be a conflict of interest for me to pose questions to you. I'll do so after my colleagues have asked a couple of questions. I'd like to first call on Mr. Emerson.

Mr. Emerson?

Mr. EMERSON. Thank you, Mr. Chairman.

Chairman Moakley, thank you for your excellent statement. It is a very fine statement. I find it very academic in nature. It is almost professorial. You make many good points referring, for example, to the fact that recommendations made by the group on the Republicans' Task Force on a higher level of involvement, that a number of the recommendations that they made were not germane, were not in accord with the germaneness rule. Yet, one of the rules of the Rules Committee is the fact that the germaneness rule is waived as almost a matter of course.

Mr. MOAKLEY. Not quite.

Mr. EMERSON. So, I am puzzled as to why you would make the criticism based on germaneness, when the germaneness rule is waived routinely when it is in the majority's interest to waive it.

Mr. MOAKLEY. I was just trying to make the point that people are crying for open rules, and then listing these 10 bills, that even if

they were given an open rule, a point of order would still lie against them as a result of the germaneness rule. I am not saying that we don't waive the germaneness rule. Of course everybody knows we do; from time to time. I was just pointing out that these weren't pure bills that would have been available to debate the entire bill, if they were given an open rule.

Mr. EMERSON. I understand. I understand, but it is standard operation procedure that the germaneness rule is almost irrelevant, because it is so routinely waived.

Mr. MOAKLEY. It is not almost irrelevant. In fact, it is probably one of the things that separates us from the other body. We can structure debate, and hold it to the matters that are under discussion.

Mr. EMERSON. Another point is that you make a point that, in essence, that if the House doesn't like the rules that the Rules Committee gives, it can reject them.

Mr. MOAKLEY. And it has.

Mr. EMERSON. Yet, I find the whip is used more strongly on the rules that come before the House, than it is on the substantive issues that come before the House.

Mr. MOAKLEY. I think this year, because the fights have been on the rule more than they have been on the substantive issues, the attack has been on the procedure as much as it has been the substance. I think that is probably why they work so hard on the rule.

Mr. EMERSON. I think the attack has been on the procedure because, in reality, the procedure has been so restrictive and unfair.

Mr. MOAKLEY. Well, fairness or unfairness, the majority party has the prerogative and the duty to get legislation to the floor, to get it through as quickly as we can.

Mr. EMERSON. Absolutely.

Mr. MOAKLEY. As you know, some of the first bills coming out were part of the Clinton proposals. Some of them were bills that were vetoed by President Bush that we had plenty of debate on.

So, fairness is always a question. I guess it depends on what side you sit whether it is fair or not.

Mr. EMERSON. In all reality, Mr. Chairman, let me say to you this is just going to be the one shot we are going to have to try to make some major reforms in the Congress.

Mr. MOAKLEY. I look forward to that.

Mr. EMERSON. Probably one shot in a long time.

Mr. MOAKLEY. Can I ask Mr. Dreier? I look forward to more open rules. We have discussed this even before the debate got as hot as it did.

Mr. EMERSON. You know, that is right. I think this being the one opportunity we are going to have, maybe, in a couple of decades to do something, we do reach a point where we have to say what is on our minds, and not dance around in this parliamentary talk that we normally dance around in.

I have made statements; I have made speeches on the floor of the House defending the Rules Committee, knowing a majority of the members of the Rules Committee on a rather personal basis, liking most of them, and talking to them off the record, I have made speeches defending the Rules Committee when rules have been pre-

sented to us that I couldn't imagine were coming from the Rules Committee.

I think very often that the Rules Committee is not permitted to be the deliberative body to define the rules under which we are going to debate legislation as would be healthy for the country, to debate legislation and amend it. I think the leadership, in their anxiety to move something quickly, to get it through, sitting off in some corner of the Capitol where the light of day never reaches, calls over and tells the Rules Committee what kind of a rule they want on a given measure.

Does that ever happen, or am I just dreaming?

Mr. MOAKLEY. Well, we are advised from time to time on the type of rule, considering the circumstances. Members have latitude on most bills to do what they want.

But I have to fall back to say that it is an arm of the leadership. It is responsible for getting the leadership's party to the floor in the best and most efficient way possible, and to structure so it deals with the matters that are under consideration, and also structured in such a way that the leadership will have a better chance of winning.

Mr. EMERSON. Absolutely. I agree with you. The Rules Committee, of all committees, is and should be a leadership committee. It wouldn't be able to function in its intended sense if it was not a leadership committee.

But I do believe there could be more deliberation. Also, there might be something to be said for the Rules Committee, instead of being one of the three stacked committees of the House, perhaps should more nearly reflect the ratio of the majority to the minority. I believe in addition to it being a leadership committee, it should also be the committee that has most to do with the protection of, the guarding of, minority rights; the rights of the minority to offer their views, in addition to just being rolled over by the majority.

Mr. MOAKLEY. As far as the ratio, Mr. Emerson, I don't know what year it was, but the Republican Party had a 10-vote majority in the House, and the ratio on the Rules Committee was eight to four.

Mr. EMERSON. That was 1953 and 1954. I remember it; I was there. I was a page.

[Laughter.]

Mr. EMERSON. My time has expired.

Mr. MOAKLEY. You were probably useful in those days. I remember it well.

Mr. DREIER. Thank you very much, Mr. Emerson. We are not going to ask you to insert into the record the names of Rules Committee members who you don't like.

[Laughter.]

Mr. DREIER. Mr. Walker?

Mr. WALKER. Thank you, Mr. Chairman.

Now that Mr. Hamilton has joined us, it is a little less uneven. Although the ratio here is about what we face when we come to your Rules Committee. I questioned when I came into the room whether a coup had taken place, and I had missed it.

[Laughter.]

Mr. WALKER. We do appreciate your testimony. I must admit that there was one part, on paragraph on page four that I am very disturbed by, where you talk about the baseball season just being one month old, and just because the Tigers are now in the lead doesn't mean they are going to win the pennant. The Phillies are in the lead over in the other league, and we are hoping that they are going to hold on to the pennant. I am a little disturbed here.

Mr. MOAKLEY. When you are a Red Sox fan, Mr. Walker, you don't think there is another league.

[Laughter.]

Mr. WALKER. First of all, I got a chance to read through your testimony, and I think you make some very valid points. There are some specific changes here that I think we ought to take very seriously, on the Committee.

I have obviously been a part of the dialogue that has taken place on the floor over a period of months that I think that at times has been a very harsh dialogue. I think that reflects, in large part, the view of the minority that we have been sacrificing a good deal in the way of deliberation in favor of efficiency. I am a little concerned when I hear in the dialogue that the job of the Rules Committee is to promote efficiency.

The job of the Rules Committee is certainly, it seems to me, to get the legislation to the floor. You have that duty on behalf of the majority. I agree with my colleague from Missouri that it should be a leadership committee. We can complain all we want about the fact that it is two-to-one, plus one, but you are right. If the Republicans had control we would also make it into a leadership committee. We would also put enough people to assure the efficient flow of legislation.

The point is, however, that if it used more for efficiency than it is used for deliberation, then I think we begin to have a problem. That has been our perception in the last few years. I think that is what has led to a lot of the harshness in the dialogue. We really don't feel as though we are having a chance to make our points felt.

We understand; we are going to lose on a whole host of issues. But at the very least, they ought to be considered by the country. The only place they can be considered by the country is not in the committees of the Congress, because the committees of the Congress are basically hidden from the country.

The place where the country gets a chance to focus on what is happening on legislation is on the floor of the House of Representatives. Win or lose, we ought to have the opportunity to bring our appeals forward, if they are germane. I would hope that the committee would stand tall and not allow non-germane amendments from Republicans or Democrats on the floor.

Mr. MOAKLEY. That is why I say we look on them on a case-to-case basis anyway. We just don't say all non-germane motions will not be put in, or they will be accepted.

Mr. WALKER. I understand, but the fact is that is a limiting kind of thing. On the other hand, if you had an open deliberative process, then the creativity of members ought to also be allowed, as long as it fits within the general rules of the House. If people can figure ways to make some subject matter germane, even though it

has some fairly limited applicability to the legislation that is before the House, then that kind of creativity ought to be permitted, too.

Mr. MOAKLEY. I have noticed the creativity of yourself and other members. You are very creative.

Mr. WALKER. The point being that when we lose that, then what you get is a lot of the hostility, both with regard to the process and the procedure, and with regard to the bills themselves. Because if we have no way to even have a vote on our points of view about those bills, the chances are that you are going to end up with a very bitter kind of debate.

At least from our perception, the Rules Committee job has been, in part, efficiency, which I think has been at the expense of deliberation; but secondly, to protect the majority from having to cast hard votes. I don't think that should be the job of the Rules Committee either. I think that if there are tough votes on the issues that you bring to the floor, then those tough votes ought to have to be cast and let the chips fall where they may. You have the responsibility and, obviously, the political right to bring bills to the floor that are tough votes for us.

There is just one question I have with regard to your idea on the motion to recommit. I think that would be useful. I think the 2 hours of time—I don't have a particular problem with that, but do you see any concern that that would end up becoming a substitute for the regular amendment process, having given the minority this so-called right?

Mr. MOAKLEY. No, I think it is just a basic right that they ought to be given. Period.

Mr. WALKER. That is not a great problem, then. I think it is a useful idea.

Mr. EMERSON. Would the gentleman yield to me?

Mr. WALKER. Sure.

Mr. EMERSON. In one of our earliest hearings the speaker testifying before this committee admonished us that the majority, as we proceed in these deliberations, should try to put themselves in the position of the minority, and the minority should put itself in the position of the majority, just to understand how each other feels. I have done that, and I really rather like it. I hope the opportunity presents to do more of it.

I think very often that this is a point that the Rules Committee should keep in mind. A lot of times in the heat of an acrimonious debate, some Democratic friend will wander across the aisle and say, "Why are you guys so exercised? What is the matter here? We are just trying to move legislation."

I say, "You don't understand how fundamentally we feel about the point that we are being denied the opportunity of making, because of the way this rule is constructed."

They say, "Oh, I didn't think about that." And I say, "That is because you are in the majority. You are never in the position of the minority. Your opportunities are never suppressed." They say, "I never really thought of it that way."

I think many members of the majority are that way. I don't think they mean to tread upon our sensitivities. They just don't know that they are, because of the way the rules are configured.

Mr. MOAKLEY. As you probably know, we have denied many majority members amendments, also, in our process. It is not just Republicans, though some of them do realize that the Rules Committee has probably done something that they are not too happy with, but I hope they look at the bigger picture, that's all.

Mr. WALKER. It is interesting to note that in the first open rule that we had out there were some people who were complaining about the fact that the first open rule caused too much debate. I would argue that was largely because leadership kept taking it in 2-hour drabs, rather than allowing us to complete the bill.

But, it is interesting to note, when you go back and look, as many Democrat amendments came on the floor as Republican amendments. It was not a case of the Republicans amending the competitiveness in this bill. It ended up being about half and half, Democrat amendments and Republican amendments that were considered. Most of the Republican amendments lost; most of the Democrat amendments won.

Nevertheless, at least from our standpoint, and as the ranking Republican that was handling the bill, at least we had our shot, and felt much better coming off the debate having had our shot than we would have if that had come out under a closed rule.

Thank you, Mr. Chairman.

Mr. DREIER. Thank you very much, Mr. Walker.

Mr. Hamilton?

Chairman HAMILTON. Joe, thank you very much for coming down to testify. We know all the responsibilities and burdens you have. It is very good of you to submit to the committee an excellent testimony.

Let me begin with a very general question first. How much reform do you think this institution can take?

Mr. MOAKLEY. All that can pass the House.

Chairman HAMILTON. The fundamental question that confronts us on this committee is how bold to be; how far do you go? What will the institution bear?

We all want to improve the working of the institution. Just give me your sense. Should we be meek and mild, or should we be bold and radical? How do you sense it?

Mr. MOAKLEY. When we write a rule, we try to put a rule together that is going to pass. Sometimes you may have to sacrifice a little of what you want to put out there because you are afraid that this might be what will pull that rule down. I think you probably face the same thing. As time goes on there are different changes that become necessary. We are in a bio-tech, global-type economy now. Maybe some changes have to be made.

Chairman HAMILTON. Let me put it more specifically. We are going to have to come to the Rules Committee before we go to the floor with whatever our reform proposals are. Suppose we come to you with a proposal that cuts the number of committees from 22 down to 10 or 12, that completely revamps the budget process, that rewrites the ethics process, that makes all kinds of changes with regard to compliance with laws that we pass. Will that get through the Rules Committee? Should it go to the floor?

Mr. MOAKLEY. It all depends on who is sitting on the Rules Committee at the time.

[Laughter.]

Mr. DREIER. I'll be there.

[Laughter.]

Mr. MOAKLEY. As you well know the magnitude of that change is something that I would never accept alone. I would have to discuss it with the leadership, and see where they are coming down on it, because those are major, structural changes.

Chairman HAMILTON. It is a threshold question for us.

Mr. MOAKLEY. I understand.

Chairman HAMILTON. If you can't move in a bold direction—and we have had testimony, frankly, all over the lot here—then there is an enormous amount of effort that goes into putting a bold proposal forward. That effort would be wasted if the judgement of the House leadership would be opposed to that. I'd like to talk with you about in other fora here.

On rules let me just give you my observation for what it is worth. I understand as you said a moment ago, that you have to deal with each rule on an ad hoc basis, and none of us would really disagree with that. It seems to me the general approach that you ought to take is for the Rules Committee to try to permit amendments on the major policy issues that are presented by the bill. If it is a big bill, that is going to be a number of amendments. If it is a small bill, there may not be any. But try to allow votes on the major policy issues.

If you have an open rule—and I know at least the appeal of that is very strong, particularly with my friends on the Republican side—and you get hundreds of amendments on a bill, what that does is that it really undercuts the committee, because members then reason, why bother to do anything in the committee? It is all going to be written on the floor anyway. Over a period of time I think you would seriously undercut committees.

Committees, it seems to me, have a responsibility to try to narrow—to define, if you would—the principal policy issues of each bill. That is their job. Then the body, as a whole, has the responsibility of voting on the tough policy choices, or maybe not tough, the major policy choices that are presented.

That is my general view with respect to rules.

Mr. MOAKLEY. I agree. I think that sometimes an open rule could change the policy of the bill completely, just by some of the amendments that may or not be adopted. I think that we have to watch that. I agree that the major issues in a bill should be listed on part of the rule so that they could be amended on the floor.

Chairman HAMILTON. Let me just make one other comment and get your reaction to it. I can get terribly frustrated on the floor when I can't find out what I am voting on. It happens to me more than it ought to. I can't find the writing; I can't find the language. That just doesn't seem to me to quite right.

Mr. DREIER. Come over to our side.

Chairman HAMILTON. You always have it over there, do you?

Senator LOTT. I was going to suggest you come to the Senate. They give it to you hand written on a legal page.

[Laughter.]

Chairman HAMILTON. You know, one suggestion that has been made is that we have a screen with the amendment projected on

the screen so that you can read the amendment you are voting on at the time. If it is a 50-page amendment, you might have to have a summary, or something of that sort. But, I just have a high degree of frustration, and I think many members do, if they can't see the language of an amendment, and don't have any time to assess it.

My own personal feeling would lean towards requiring amendments be submitted ahead of time. I understand you can't have that all the time because there are circumstances on the floor where you do need to develop new language. I think we ought to think about, anyway, increasing the opportunities for members to see what they are voting on.

Mr. MOAKLEY. Maybe we should have the person sign down at the desk that would be up to date on every amendment, so that you'd get an answer. I know what you are saying, because people are rushing in from committee, and you are working the door sometimes, and you have to give them a capsule explanation of the amendment, and sometimes it is not really enough for a person to make a determined judgement on it.

Chairman HAMILTON. I am through. Thank you very much.

Mr. MOAKLEY. Thank you, Mr. Hamilton.

Mr. DREIER. Senator Lott?

Senator LOTT. Mr. Chairman, it is nice to see you again.

Mr. DREIER. Senator, it is nice to see you again.

Senator LOTT. I guess you never thought you'd see the day when you missed me on the Rules Committee, did you?

[Laughter.]

Senator LOTT. And you may not.

First Mr. Hamilton, in answer to your question, I'd like to suggest that I hope that this committee will take a very bold approach to what needs to be done in the House and the Senate. I know that there are certain risks involved in that.

I can't remember what the issue was; I was just asking Don Wolfensburger. A few years ago Dick Bolling was heading up a major reform, and there was too much involved there, and it wound up getting defeated, as I recall, on the floor of the Senate. There is the art of the possible, but I think if you go for the bold package, then if you have to back down in order to get some positive results, you can always do that. If you start off with a skinned down approach, then you will get something less than that.

I think we do have an opportunity. I think the atmosphere here, and the mood of the country, is right. I believe that the Congress, the House and Senate, is more inclined than I have seen them in years to try to do some dramatic things. I hope we would do that.

Let me ask you a couple of questions, Mr. Chairman, with regard to your Oxford-Union style debate program that is proposed by Norm Ornstein and Tom Mann. Briefly, how would you see that work in the House? Would you do that in place of special orders and one-minutes?

Mr. MOAKLEY. The leadership of both parties would get together and determine a date—certain once a week, or whenever this would be brought up, and set the time aside. It would allow for a full debate, Q&A right on the spot, rather than the simple one minute statements, or special orders where it is a one-way conversation,

and you don't have a chance to rebut or contest anything that is being said.

I think that watching some of the TV that comes down from Canada, watching some of the material that comes over from Great Britain, that that type of debate could have a place in this Congress, in this type of legislative setting.

Senator LOTT. We don't certainly have much of that type of debate now.

Talking specifically about the Rules Committee, I have been watching the Rules Committee for 24 years, as a staff member to the Administrative Assistant to the Chairman of the Rules Committee for 4 years, then in the House as a member of that committee for 14 years, and now I continue to watch it. I have noticed the evolution that has occurred the years.

When I first came to Washington, generally speaking, there were not any closed rules except basically revenue bills out of the Ways and Means Committee. Then it kind of grew to be applicable to a lot of Ways and Means Committee bills. Then it continued to grow. We went into the complex rules. Do you remember on the Energy bill.

Mr. MOAKLEY. Yes, we had five or six committees.

Senator LOTT. Yes, where you had overlapping jurisdiction. Then we kind of moved, while I was still there, into the area where we weren't going to cut off amendments, but you had to get them printed in the record a day or so in advance, so the committee of jurisdiction could look at them and know whether or not they were germane, or what problems were involved. Then it continued to evolve until now, this year, unfortunately in my opinion, you have basically shut the door on amendments.

Mr. MOAKLEY. We are opening that door now.

Senator LOTT. I do think it is important that you open it. As a member of the Senate, when I first got to the Senate, I thought what we need is a Rules Committee. But, now that we have a new administration, and filibusters are looking more attractive, I really don't think a Rules Committee would work in the Senate.

I think probably what both bodies need to do is to come a little back toward the middle. The Senate needs a little bit more control, somehow or other, not a Rules Committee. The House needs to open up their processes more, because I think the atmosphere that creates is wrong. Members have right to be involved and participate in a reasonable way. Your thinking is that you are going to try to move back toward a more openness from the Rules Committee?

Mr. MOAKLEY. That is right. We have been talking with the leadership on this thing.

Senator LOTT. I commend you for that.

I have just one other comment. You may or may not want to respond. I apply this to both parties. I don't mean it critically, necessarily, of any of the present leadership. I continue to maintain that most of the problems we have could be resolved if we had strong and fair leadership. A lot of what is missing is leadership applying pressure, or stepping aside at the right moment, leadership working together across the aisle.

I hope that is something we will keep in mind in the future. That is not an indictment of the leadership. They are only as strong as we give them the ability to be. But a lot of our problems are just because we have taken away the authority, in many respects, of our leaders to do what is necessary.

Do you have any comment on that?

Mr. MOAKLEY. I think that people's personalities enter into the way they lead. I remember when Jim Wright was here, some people were saying he is too tough, you can't talk to him. I thought he was a good fellow, and I thought was doing a good job. Then when Tom Foley came he was not as tough as Jim Wright, and I thought he was doing a good job. I think the times just called for that type of thing. I think as long as you have an informed leadership who opens the process up in a reasonable way that a lot of our problems would be solved.

Senator LOTT. Thank you, Mr. Chairman.

Mr. DREIER. Thank you very much, Senator Lott.

Mr. Allard?

Mr. ALLARD. Thank you, Mr. Chairman, and thank you for taking your time to show up before this committee.

There are a couple of areas that I wanted to approach you on and get your opinion. One is the 3-day rule requiring some printed material that you have to have before you vote. We waive that, historically, just before the end of the session. If we maintained that 3-day requirement, made it more difficult to waive that at the end of the session, do you see any problems with that?

Mr. MOAKLEY. Yes, in fact, in my text I addressed that.

Mr. ALLARD. I am sorry; I didn't see it.

Mr. MOAKLEY. We can streamline it a little bit. If we had had the streamlined version of that, which I proposed, in place now so we started running as soon as the committee submits the legislation, it marks it up, because there is a couple of hours left in that day. It ends up saving us 2 or 3 days, anyway, when you get through the 3-day layover, and the 3 days for minority viewpoints.

Mr. ALLARD. So, if we were to make it more difficult to grant that waiver, you wouldn't have a problem with that?

Mr. MOAKLEY. You mean like a super-majority, more than two-thirds?

Mr. ALLARD. Yes.

Mr. MOAKLEY. I think two-thirds is enough to waive anything.

Mr. ALLARD. Okay. On signing discharge petitions, presently any discharge petition that goes on the front desk, those names are not publicly accessible. I am relatively new to the Congress. I am not sure I understand why those names aren't made public. It seems to me that is something that could be done. I have been involved with a discharge petition. It is a little frustrating trying to figure out who has signed it, and who hasn't. It makes it difficult to organize your people. Do you see any problems in making those names public?

Mr. MOAKLEY. I really never thought about it.

Mr. ALLARD. At least to the bill's sponsors.

Mr. MOAKLEY. I really never thought about it. I just don't know what the genesis is of keeping the names secret.

Mr. ALLARD. That is my problem. I don't where it came from.

That is all I have, Mr. Chairman.

Mr. DREIER. Thank you very much, Mr. Allard.

Ms. Dunn?

Ms. DUNN. No questions, Mr. Chairman.

Mr. DREIER. Ms. Norton?

Ms. HOLMES NORTON. Thank you, Mr. Chairman.

I am sorry, Chairman Moakley, that I was not here to hear your entire presentation. I would like to ask you a question about the open rules and the effect of the open rules thus far. We have seen dilatory and delaying tactics, pro forma votes, by the minority, since the open rules. The effect of this, of course, is to give the appearance of continued gridlock, as people watch the proceedings of the House of Representatives. I wonder if since the open rules have begun to come forward, you see any lessening of those kinds of tactics by the minority?

Mr. MOAKLEY. One thing we don't have in our committee is a crystal ball. We get a lot of complaints that the rules are not open. It is restrictive. If you are not on the committee you don't have a chance to testify. So, what we do is we try, if it is not a tax bill or a very important piece of legislation that is requested by the President or the Speaker, we try to open the rules in some fashion. The rule on the floor on the competitiveness act is a completely open rule. There are ways you can structure it to make certain that amendments are in order, and certain amendments are not in order.

But, as I say, it is always a fight between the majority and the minority what type of rule it should be, how open it should be, and what access should the minority have to participating in the legislative process. If people want full open rules, there is no way that the Rules Committee can restrict it, because if you vote an open rule it is open and they just take full advantage, any advantage that anybody wants, as long as they are germane amendments.

Ms. HOLMES NORTON. If one looks at the business that comes before the House and imagines an open rule on every measure, it is hard to believe that one could do the business of the House. How does one decide when open rules are consistent with the efficient functioning of the House of Representatives itself?

Mr. MOAKLEY. As I say, we try to do it on a case-by-case basis. Anytime you open a rule, you allow yourself open for dilatory and mischievous amendments. I would like to see amendments be proposed by the leadership in both parties, or their designee, and that probably is a better way of addressing it. Yet, you would be in effect, according to some people, gagging some of the members that are elected, and that just wouldn't do. So, it is an eggshell walk every time you report a rule up.

Ms. HOLMES NORTON. You have a very tough job, Mr. Chairman. We admire the way you handle it.

Senator LOTT. Mr. Chairman, could I ask one more question?

Mr. DREIER. Senator Lott?

Senator LOTT. On this question of joint and sequential referral in the House; it was getting to be a problem years ago, and I think it has continued to grow. I know in a lot of state legislatures the Speaker of the House, for instance, or the Lt. Governor, in the case of the Senate perhaps, makes the decision where a bill will go. He

puts it where he wants it, but it goes to one committee. I think that is one of the things that is complicating your ability to get jobs done in the House. How can you deal with that?

Shouldn't there be somebody, some process, whereby when there are competing jealousies, turf and jurisdiction disputes, when everyone is out of control; someone can say we are going to send it to this committee, and the rest of you are going to have to make your case on the floor? What about some process that will allow that? I think it is really a mess. There needs to be some limit on this joint and sequential referral.

Mr. MOAKLEY. That came out of the Bolling Commission, some of the referral situations where a committee shared joint jurisdiction. It made our life in Rules tough, because both committees that have part of it want to be the base text. It is a fight over jurisdiction and territory all the time.

I don't know, at this stage if you can go back to putting it to the one that has the majority. I think of the Atomic Energy Clean-up bill. There were about six committee involved.

Senator LOTT. Maybe part of the solution would be if we reduce the number of committees. Then it would be easier to refer it to only one.

Mr. MOAKLEY. I think if you reduce the number of committees, you take care of your proxy problem; you probably take care of your jurisdictional problem. You take care of a lot of things. In fact, some people think maybe we should go back to one committee, and then everything would be solved.

Senator LOTT. The Committee of the Whole?

Mr. MOAKLEY. Yes.

Senator LOTT. Thank you, Mr. Chairman.

Mr. DREIER. Thank you very much, Senator.

Mr. Chairman, you and I have had some private discussions about the issue of the reform of the Congress. I wanted to pose a couple of questions to you.

First, you've indicated to me privately that you support the idea of reducing the number of committees in the Congress. Do you think that might play a role in improving the operations of this Congress?

Mr. MOAKLEY. I said I think we should take a hard look, because we were talking about proxy votes. On the Rules Committee we don't have much a problem with proxy, but I can see Energy and Commerce, Judiciary, and all those, Ways and Means, not being able to get the quorum present to start proceedings.

Yes, I think in 1974 when they opened it up to all those subcommittees, and we de-centralized the power in the Congress, because people thought that they wanted to participate in a fuller way, we in fact set up all these subcommittees. Now it is hard to get that genie back in the bottle. It probably will be a recommendation of this committee. People will have to look very hard at it.

Mr. DREIER. When our Rules Committee colleague, Mr. Derrick, was before us, he advocated elimination of proxy voting. I am one who believes that it works reasonably well up in the Rules Committee. You were right when you reminded me that we sometimes have to wait for some of our colleagues to come forward. But you

do support the idea of the elimination of proxy voting, if we were to reduce the number of committees in the Congress?

Mr. MOAKLEY. I said, if the committees were reduced, you probably wouldn't have to worry about the proxy problem.

Mr. DREIER. Because then members would show up for their committees, and they wouldn't be going from one to another?

Mr. MOAKLEY. They would have fewer committees to go to, and subcommittees. I think maybe subcommittees could be reduced. You and I know there are people serving on four and five subcommittees. I don't know how they do it.

Mr. DREIER. Mr. Chairman, thank you very much. Rumor has it that the next witness might in some way respond to a number of the items that you have brought up. We appreciate your taking the time to be before us. I thank you very much, again, for the fairness that you provide to me as a member of your committee.

At this point I am proud to turn the gavel over to Ms. Norton for what I hope will be a very kind and generous introduction of our next witness.

Ms. HOLMES NORTON (assuming Chair). It is a special pleasure to call our second witness of the day, our very own vice chairman, the Vice Chair of the Joint Committee on the Organization of Congress, Representative David Dreier. David is also on the House Rules Committee, where he is ranking member of the Subcommittee on Rules of the House.

Vice Chairman Dreier?

STATEMENT OF HON. DAVID DREIER, A U.S. REPRESENTATIVE FROM THE STATE OF CALIFORNIA

Mr. DREIER. Thank you very much, Ms. Norton. I appreciate very much that kind introduction. I was a little nervous.

Ms. HOLMES NORTON. Never to worry.

Mr. DREIER. Let me say that I do appreciate the opportunity to for the first time get a good look at all of the other members of the committee and the staff members working for this. This is a rather unorthodox matter, but I believe that this issue of floor procedures is very important. That is why I have chosen to address my colleagues on the committee from this side of the table.

I am now serving my second term on the Rules Committee, but given the atmosphere that we have seen this past year with restrictive rules, it often seems like it has been more than a decade that I have been on that committee. Let me say that I do enjoy working on that committee.

I have referred to Chairman Moakley as the best chairman in the Congress. I truly believe that he makes every attempt to be even-handed, but again as he pointed out, he is chairman of a leadership committee. He has to, in his position, represent the leadership.

I also should say that it has been a great pleasure for me to serve on that committee under the leadership on our side of my good friend from New York, Mr. Solomon.

The chairman's testimony that he provided for us a few minutes ago was extremely helpful. He does, as I have said, command a great deal of respect, both on and off the Rules Committee, because

of his fairness, decency, and genuine desire to be as accommodating as he possibly can.

But his best efforts notwithstanding, words like fairness, decency and accommodating don't describe how the Republicans and, as Chairman Moakley said, even many Democrats who were disenfranchised by the Rules Committee, are treated in the legislative process. Since Chairman Moakley used the baseball analogy in his statement, I'd like to use another one.

Imagine yourself as the manager of a baseball team that must play all of its games on the road. The home team can change the rules with each game. Suppose your line-up is loaded with home run hitters, and the home team could simply move the fences back. Or, it is your ace pitcher's turn in the rotation, and the home team can just declare him ineligible to play. Then your complaints are dismissed by the home team as obstructionist in an effort to embarrass you.

Frankly, these are the rules that those of us in the minority must play every day. Mr. Solomon testified before our committee, he is a member of the committee, and testified here recently. He, in his statement, talked about the decline of deliberative democracy, and the Task Force to Mr. Moakley referred a few minutes ago.

I'd like to repeat the quote that Mr. Solomon used that I think is a very important one. It was delivered on the 1st of November, 1942, on a program called Texas Forum of the Air. It was former Speaker, Sam Rayburn, when he said,—and Ms. Norton, I would provide Speaker Rayburn's quote in direct response to the issue that you raised as it relates to this competitiveness act that we were just addressing, and completed last night, under the first open rule that we've had in this Congress. "Not all the measures which emerge from the Congress are perfect, not by any means. But there are few which are not improved as a result of discussion, debate, and amendment. There are very few that do not gain wide-spread support as result of being subject to the scrutiny of the democratic process."

Now, improving legislation through democratic scrutiny, and that is a small d, is in my view the principle that should guide this joint committee as we look at reform of the operations of Congress. In fact, we would be hard-pressed to find any one of our colleagues, Democrat or Republican, who would dispute Speaker Rayburn's statement.

That being the case, there should be not controversy, but of course we all know there is. If your were to ask me in one word to describe what has gone wrong with the process, and what is needed to restore public confidence in this institution, that one word would be accountability.

Many features of the present structure, organization and procedures of Congress allow House members to avoid public accountability on many controversial and important issues. These include a large and seemingly permanent staff bureaucracy; 266 committees and subcommittees, with overlapping and contradictory jurisdictions; proxy voting and a bewildering budget process. However, the most overt tools used to obscure and avoid political accountability is the use of restrictive floor procedures and rules abuses.

Ironically, this very same issue was at the heart of the 1974 freshman revolt that opened up the process by weakening the seniority system and expanding access to floor voting and participation. But slowly, as those reformers of that class of 1974 gained seniority and leadership positions, progress toward openness rapidly degenerated.

Consequently, deliberation, accountability, and representation are no longer the distinguishing characteristics of the people's House. Instead, the situation is reminiscent of the big city political machines that flourished earlier in this century. We have constructed a patronage system on a massive scale. It doles out favors to influential interest groups, promises utopia to the masses without acknowledging trade-offs, and punishes those who have a difference of opinion with the machine's agenda.

What this machine doesn't do is produce thoughtful legislation that commands widespread public support. In fact, I don't think it's a mere coincidence that the growing prevalence of restrictive floor procedures has coincided directly with the decline in public support for Congress as an institution.

We have all heard the numbers, but they do bear repeating. In the 95th Congress, 85 percent of the legislation that passed through the Rules Committee were open to germane amendments on the floor. In other words, any member could stand up at any time and offer an amendment that he or she thought could improve the bill. In the 102d Congress, the Rules Committee permitted open debate just 34 percent of the time.

What does the ability to offer an amendment have to do with accountability? If a member has the power to offer an amendment, he can no longer claim to support one thing, but then say that he was blocked in his effort to make a change in the law. In addition, with more floor votes on more clear issues, members will be forced to take clear positions. That is exactly what the American people want—fewer excuses, and more elected officials who actually stand for something.

We are all familiar with what has happened this year with restrictive rules, and I want to at this point commend Speaker Foley for his April 22 statement in which he said there will be open rules on major legislation, major legislation that we consider. But let me say that placing non-controversial bills, like the Passenger Vessel Safety Act, on the regular calendar to pad the open rules number is not a good faith effort to address the problem of a lack of open rules on major legislation. I hope that the Speaker will continue to work with our side on a reasonable accommodation.

There are two excuses for restrictive rules that I find particularly frustrating, and I want to dispel them here. First, some have made the contention that restrictive rules are necessary to prevent Republicans from offering amendments intended simply to embarrass the Democrats. I will acknowledge that Republicans, on occasion, have offered amendments which were designed to embarrass Democrats. But a simple analysis of the amendments that have been denied by our Rules Committee show this argument is very weak.

Many substantive amendments have been denied. I'd like to include in the record a few examples: an amendment by Mr. Grandy

to the family leave bill to provide tax incentives to small businesses that were offering leave benefits for their employees—that amendment was denied by the Rules Committee; an amendment by Mr. Livingston to the Motor Voter bill to allow states to remove the name of a person from the registered voter list if the person has not voted for 10 years—that amendment was denied by the Rules Committee; an amendment by Mr. Shaw to the unemployment extension bill to provide additional weeks of benefits to people in federally declared natural disaster areas—that amendment was not allowed by the Rules Committee to even be considered on the floor; and amendment offered by Mr. Wolf to the Hatch Act—he had several amendments to reform the Hatch Act. His amendments were designed to protect federal workers from excessive political coercion. That amendment, too, was denied by the Rules Committee. These are examples of substantive amendments that were not allowed.

Second, some defend closed rules by claiming that they prevent obstructionist tactics, and are needed to speed legislation through the process. It only takes a moment to look at the House schedule over the first 5 months of this year, weeks have been passing on with little or no floor activity at all, and see continued use of completely closed rules to see that scheduling needs do not drive the restrictive rules. If anything, creative scheduling and the imposition of phoney deadlines become a weak excuse for limiting the rights of the vast majority of House members on both sides of the aisle.

Along with restricting the ability to amend legislation on the floor, there are other procedural abuses that allow Congress to evade accountability. Examples of those include:

Motions to instruct conferees. These are used more frequently because members are often prohibited from offering amendments to relevant legislation. Unfortunately, because these motions are not binding, members can vote for the popular position on a bill without the threat of that position becoming law. Recent examples of that include the elimination of franked mass mailings in 1989 and a prohibition on HIV infected immigrants coming into this country.

Self-executing rules, another example. These are increasingly used to avoid floor votes on substantive issues, and cloak them in the shroud of procedural votes. Once again, the goal is simple: avoid accountability by making a vote as difficult as possible to follow.

The most recent example that comes to mind involves the Family Medical Leave Act. The rule on the conference report contained self-executing language that made the vote on the rule the vote on the Senate amendments. Those amendments included a resolution affirming the President's interim policy on gays in the military.

The Senate had vigorous debate for three hours on this issue, and yet not a peep was uttered in the House. Worse, since legislative language was not available for members to read, many were not even aware that the provision was there as they were preparing to vote on it on the House floor.

Another concern, King-of-the-Hill rules. These rules, in which the last amendment to pass is the one that is adopted, are typically

used to frame the debate over broad policy issues. The biggest criticism is that the last amendment has the advantage. This is the least of my concerns. More disturbing is how the procedure can be used as a bait-and-switch maneuver. It was used on President Bush's rescission package last year. Intentionally or not, it allowed members to be on record voting to cut spending on such issues as animal manure studies and prickly pear research even though the funds would be restored in the very next vote.

And the issue which was discussed with Chairman Moakley; waiving the 3-day layover rule. Under the rules of the House, members must be given 3 days to read and review a bill before it can be considered on the House floor. This is especially important today because, over the past 20 years, the average bill has quadrupled in size.

Tax and budget bills tend to be hundreds, if not thousands, of pages long. This year, the 3-day layover rule was revoked on 77 percent of the legislation that passed through the Rules Committee, up from 8 percent in 1976 and 1977. Increasingly, members are forced to vote on complicated legislation they have never seen. The details are known only to a handful of non-elected committee staff people who are not held accountable to the voters.

This is a fear I have with the upcoming reconciliation bill which is scheduled to come before our Rules Committee next week. Members may not have a chance to read the biggest tax bill in American history because Congress will be under pressure to meet that all important deadline that we have next week, the Memorial Day recess.

These are just a few commonly used procedures that, intentionally or not, weaken the legislative process and undermine accountability. Others include the prohibition on revenue-neutral en bloc amendments to appropriations bills and the practice of legislating on appropriations bills.

I am also constantly amazed by the degree of sophistication and ingenuity that goes into new ways of avoiding deliberation and accountability. Most recently on the debt limit extension bill, the House, by declaring the measure as reconciliation legislation, essentially imposed a gag rule on the Senate, prohibiting debate on balanced budget and line-item veto amendments.

I can certainly understand the views of the majority. They were elected to control the agenda and the schedule, and they have an obligation to put forth clear and concise legislation that represents well their vision of government. I also do acknowledge that restrictive rules—not closed rules, but restrictive rules—are useful and necessary on occasion when the leadership of both parties agree, such as when we consider major tax bills, revenue raising bills, and the Department of the Defense authorization bill. Nobody in the minority disputes those contentions, and we are not out to change the concept of majority rule. What I and my colleagues on the Republican side are trying to change is a process that does not give the American public clear and concise legislation.

Voters are getting vague, confusing, and contradictory information. Procedural abuses create a breeding ground for special interest groups to take control over the legislative process. In the end, we end up with what Milton Friedman calls the phenomenon of

concentrated benefits and dispersed costs. It explains why government programs continue to grow and grow and proliferate after many of them have been clearly identified as failures.

Complete information is an essential ingredient to a functioning marketplace. It works in the market for goods and services, and it clearly will work in the market for ideas. What I am asking for is the equivalent of a consumer protection act for legislation. If groups like Common Cause, Public Citizen and Congress Watch are serious about competitive politics and reducing the influence of special interest groups in the legislative process, they would be as just as vocal against restrictive and abusive procedures as those of us on the minority side are.

The question, then, is how do we find the proper balance between this issue of openness, and accountability, and efficiency? A number of recommendations relating to floor procedures and scheduling are contained in H.R. 36, which was introduced by the Minority Leader, Mr. Michel. I am going to include a summary of those with my prepared statement.

A recommendation I strongly support is the concept of a super-majority vote, whether it be two-thirds or three-fifths, to waive points of order against legislation. At the beginning of each session, the majority puts forth a package of changes to the House rules that outline the procedures they deem necessary to control the agenda and the floor schedule. Once the rules are made, we should have to play by them unless extraordinary circumstances warrant otherwise.

This, in my view, is the single best reform. Madam Chairman, I have been saying this throughout this committee hearing process over the past several months. The best reform that we could implement would be simply adherence to the standing rules of the House. Congress has come under substantial public criticism for the perception that it does not have to comply with many of the laws that it imposes on society. Imagine how much greater that criticism would be if the public was aware of the fact that Congress—at least, in this instance, the House of Representatives—does not comply with the laws that we impose on ourselves.

To address minority concerns about restrictive rules that block important amendments, I recommend that the minority be permitted to offer one amendment to a restrictive rule before the previous question is ordered. The amendment could come in the form of an open rule substitute, or it could identify one or two specific amendments to the bill to be made in order. In this case, the majority could still preclude amendments it deems trivial or disruptive, but a majority would have to vote in support of that position. Members would no longer be sheltered from controversial votes by the Rules Committee.

Madam Chairman, this committee should rightfully be cautious about altering House rules governing floor procedures, which the majority needs to have to control the public policy agenda. In fact, my complaints are not necessarily directed at these rules per se. They are directed at the chronic failure of the majority leadership to abide by the rules that are there, and the fact that distorting these rules jeopardizes the issue of accountability. That is a situa-

tion that the Joint Committee clearly can, and I hope very much will, address.

I look forward to continuing with the constructive dialogue that we have had over the past few months. I look forward to the completion of this committee hearing process, and I look forward this summer to working closely with all of you as we proceed with marking-up with legislation I hope will bring about very historic reforms that will once again implement accountability, which I think is so desperately needed. Thank you very much.

[The prepared statement of Mr. Dreier is printed in the Appendix.]

Ms. HOLMES NORTON. Thank you very much, Mr. Dreier.

Mr. Emerson?

Mr. EMERSON. Thank you, Madam Chairman.

David, I think you made a very excellent statement here summarizing the essence of Republican complaints about the rules of the House of Representatives. I regret that more members of the majority from the House are not here to hear them, because I think they must be taken very seriously if indeed this committee is to progress and make the reforms that I think the country wants.

Mr. DREIER. They have heard many of these arguments on the House floor many times.

Mr. EMERSON. In the Congress? Well, I understand that, but you have done an excellent job of presenting these arguments. I think that by almost any objective criterion they must be considered legitimate, and I think that fact, in and of itself, speaks for them. They would be judged reasonable, I think, by a representative group of Americans as to how our processes should occur here.

I think, indeed, the representative group of Americans to which I refer would be shocked to know that the kind of rules that you are talking about do not currently obtain in the House of Representatives. There is very little opportunity for the minority to exert a point of view that is contrary to the whim of the rules which are, of course, structured by the majority.

I commend you for the wonderful job that you have done in cataloging these grievances, and want to join you in saying to this entire committee that I hope they are taken as seriously as I know you intend them.

Thank you.

Ms. HOLMES NORTON. Thank you, Mr. Emerson.

Mr. Allard?

Mr. ALLARD. Thank you, Madam Chairman.

I'd like to compliment you, Congressman Dreier, on your exemplary leadership on this committee, and your testimony was certainly very appropriate.

I think that this committee needs to come out with some very significant suggestions. I think it is imperative if we are going to continue to have any confidence from the American public that we do come up with some meaningful reforms.

One of the things that has been concerning me, and you and alluded to those in your testimony, was the ability to make amendments on the floor, and the ability to reach a balance there where it doesn't get abused, but yet there is plenty of opportunity for the minority. One of those areas that we talked about with Mr. Moak-

ley, and maybe you might elaborate a little further on it, is the right of the minority on motions to recommit with instructions.

The way I understand his testimony, there is a couple of conditions that he put on that. One is that either the Minority Leader or his designee makes that motion. Then, number two, that the Speaker can postpone that debate for up to 2 hours. I wondered if perhaps maybe you wouldn't comment on that, since you are a member of the Rules Committee?

Mr. DREIER. I don't have a tough time with that proposal. Mr. Moakley indicated that this was part of the package that came forth from Norm Ornstein and Tom Mann. Actually, I think they called for a 1-day period. It seems to me that the real issue here, Wayne, that concerns me has been not the structure of the rules themselves. Chairman Moakley proposed some very decent ideas for trying to streamline the rules process.

The thing that really concerns me is the fact that we have constantly waived the rules that we have up to this point. I am concerned about the prospect of seeing them waived in the future. That is why in my proposal I have a super-majority, two-thirds or three-fifths, to waive these rules. I believe that will bring about a greater degree of accountability, and get to the root of this issue.

He said that if his proposal had been in place on the 3-day lay-over provision that on the legislation that we have considered in this Congress, it wouldn't have been necessary. Frankly, I suspect that they would have found ways to waive that, because it has been done in the past. That is why I think we need to move in the direction of this super-majority to bring about these sorts of waivers.

Mr. ALLARD. I agree with your comments.

Thank you, Madam Chairman.

Ms. HOLMES NORTON. Thank you, Mr. Allard.

Ms. Dunn?

Ms. DUNN. Thank you, Madam Chairman.

David, I enjoyed your testimony. We have talked about these things for a long time, but I think that the words used you about the deliberative aspect of the process, and accountability, have to be said again and again. When I came to Congress last fall as a new freshman I think I was most stunned by the fact that we are not free to present on the floor of the Congress our alternatives that might make legislation better, or work more smoothly. I don't think that the American public understands this.

Some of us met yesterday morning with Mr. Perot. He didn't know this. So, as a result, he said he wants to use some of the time that he buys on TV to interview those of us who have been involved.

Mr. DREIER. I recall we tried to explain it to him when he testified before this committee.

Ms. DUNN. I remember that; you're right. So it takes a few times for anybody to pick up on this.

I think it is a shocking statement that those of us who have been elected by a huge number of constituents really don't have the right to represent them in the way that we would like to.

I wanted to move in on the accountability situation from a little bit different slant. In the beginning of my career here I testified before the Rules Committee. It was a tiny, little room, so small you

just couldn't fit the press inside. I am wondering what your thoughts are on the open meeting law that some of us are working on. Does it depend not on the will of a committee like Rules? Why don't they move to a larger room, where C-SPAN could get in there? What is your general thought on that?

Mr. DREIER. Jennifer, I congratulate you for your work on that. I know it is something that has emanated from your observation in the State of Washington of this issue. It hasn't been done recently, but the C-SPAN cameras fit into the Rules Committee. It is tight, cozy, and all. That Rules Committee upstairs on the third floor is the smallest committee room in the Congress. You are right that we couldn't fit the entire press corps in.

When I joined the Rules Committee, I did encourage our friends at C-SPAN and others to monitor the action of the Rules Committee, because, frankly, doing the things which we have discussed here in preventing members on both sides of the aisle from having the right to offer amendments is something which I believe is very unfair.

I don't know that I'd advocate moving the Rules Committee to another room, because it is just so darned convenient for me to have it right upstairs from the chamber. But I do believe that we should be capable to provide the television coverage that this committee now has, and that other committees have, on a regular basis.

We have gone through a couple of battles, by the way, with members of the committee who have prevented C-SPAN from covering those hearings. I hope that those battles are behind us. I support very strongly the idea of opening up this process so that the American people can observe it.

I have to say that sitting behind me—they probably left in the middle of my testimony—are two of my constituents. They came to Washington, and I assumed that, like most of our constituents, we would get them passes to the White House and the FBI and the State Department. They said, "We don't want any of that. We simply want to have the opportunity to observe what it is we see on C-SPAN on a regular basis."

The Ludwigs have demonstrated to me that people can learn a lot from being able to observe the activities of this institution, I mean their representatives. That is why I agree with you wholeheartedly, Jennifer, and congratulate you for pursuing this openness issue. I do hope that we can have a greater degree of openness in the Rules Committee, and full exposure to it.

Ms. DUNN. I am glad to hear your position, David. I think it is very important, too. I think the press has a certain level of responsibility here in coverage of what is going on behind, now often, closed doors in committee meetings. It is amazing how much educating you can do when you can get the picture of what we do in committee meetings, and in hearings, on television. So, I certainly hope we will go in that direction. Thank you very much.

Thank you, Madam Chairman.

Mr. DREIER. Thank you.

Ms. HOLMES NORTON. Thank you very much, Ms. Dunn. Senator Reid?

Senator REID. Congressman Dreier, I have sat with you through days of these hearings. How do you feel after having been through the long days of hearings? Do you feel that we are going to be able to do anything?

Mr. DREIER. Harry, that is something that I have given a great deal of thought to. I'll be frank and share with you some thoughts that I have had.

The issue of committee structure reform is obviously one of the major items that we have to address. We have just completed that series of hearings. I listened to committee chairmen and ranking Republican members talk about their desires to maintain the status quo. I was discouraged by that.

I realize that when we proceed with this we are going to be offending more than a few people. Dave Boren has regularly talked about how we are going to be sitting alone in our dining rooms because none of our colleagues will sit with us. But it is going to be tough to put together a bold reform package.

My sense of optimism is back after having listened to the committee chairmen and ranking members now that we are talking about the issue of floor procedures. So, I wouldn't have requested membership on this committee if I didn't believe very sincerely that the chance for reform was out there.

I am one who has looked at the reform packages which have come forth over the past century, and I do believe that with now 112 new House Members and 13 new Senators, and this public outcry for more accountability and reform in this institution that we do have a chance to do it.

It has been like a roller coaster over the last several months, Harry. Sometimes I feel very optimistic, and sometimes less so. I do at this point feel that we have a very important responsibility. I have enjoyed working with you, and look forward to the process as we proceed. We all love this institution. Clearly, I think that those of us who wanted to join this committee did so out of a desire to see it improve. I am anxious about the chance for bringing about major change.

Senator REID. I think that as members of the committee it probably would be good for each of us to listen to each of us, as we have listened to you about our ideas as to what should be done. Hopefully, it is my understanding that we are going to be able to get together as the 24 of us, or whoever can arrange that at some subsequent time, to sit down and talk about all these things. I hope we do that, because I think we have to do the doable. That is, I think we have to be bold in what we do, but yet recognize there are certain limits of what the membership of the Senate and the membership of the House will accept.

I think we have to recognize that to be effective as a committee to re-organize Congress, that we are going to have to, on some issues, set aside our partisanship. That is going to be hard for all of us. But if we complete these days and weeks of hearings, and accomplish nothing, I don't think it speaks well for us and our leadership abilities. I think it speaks a lot worse for our country if we cannot change what is going on in the Congress.

I have attended a lot of these hearings and there is rarely anyone that wants to maintain the status quo, generally. We can

get our membership on both sides of the Congress to vote for change, because that is what we are here to do, to change the way we do things around here. I hope that you do maintain your ability to not be pessimistic, to be optimistic, because I think if we don't feel we can do it, it won't be done.

Mr. DREIER. By nature I am very optimistic, and I have little choice serving as a minority of the Rules Committee, being an eternal optimist.

One of the things I'd like to take advantage of in being on this side of the table is to ask you a question. Do you sense that when you go home to see your constituents in Nevada that there still is a real interest in bringing about reform of this institution? We know that the whole establishment of this committee came about in large part due to the check bouncing scandals, and the problems in the post office, and these kinds of things. I wonder if it is as strong as it was last fall?

Senator REID. I believe that our serving on this committee gives us the opportunity to do some things that need to be done. I, frankly, just finished an election, as all the House members did, and I tried to use my membership on this reform as a political plus. I have to tell you, frankly, people just didn't much care. They were more concerned about budget deficits and foreign policy and health care.

So, I think we have to really do this because it is the right thing to do. I don't think we are going to have the madding crowds out here cheering us on to do this. I followed your testimony very closely and I also have read Joe Moakley's testimony, and frankly, a lot of it is very technical. I am not sure that anyone in Las Vegas or Boulder City knows or cares about a motion to recommit.

Mr. DREIER. I think part of our responsibility here, Harry, is to let our constituents know that if we are going to effectively address the overwhelming problem of the budget deficit, health care reform, tax relief, all these items that they raise as issues, we have to improve this institution.

Senator REID. I believe that. I think we have to convey that somehow.

Mr. DREIER. That is what I have been trying to do.

Senator REID. I think, David, that we have to do that, because it will allow us to address health care, and deficit reduction, and crime, and all that kind of stuff. So, I hope that we can do that, in my opinion, in spite of the fact that I don't think there are a lot of people saying I'm glad you are on that congressional reform committee.

Ms. HOLMES NORTON. Thank you very much, Senator Reid.

David, I have just one question for you.

The statistic that you cite on page two of your testimony, as you say there, is often cited, the difference, the contraction if you will, between the 95th Congress and the 102d Congress from 85 percent open rules to 34 percent; have you looked beyond that figure to see whether this was all politics, all partisan politics, or were there objective reasons at all that could account for this great difference?

Mr. DREIER. Let me respond, if I can, to the exchange that you had with Chairman Moakley, because you, I know as many members have, been concerned about the one open rule that we had on

the National Competitiveness Act, which we finally voted on last night. The case has been made that we had 5 days of deliberation on this. You used the term dilatory tactics by members of the minority. It seems to me that for starters, we didn't have 5 full legislative days. This was for the most part used as filler.

There is one point that I like to make on the open rule process. I was here when we had many open rules in the 1980s. I remember times when members would stand up and ask unanimous consent to have debate on this amendment limited to an additional 15 minutes, and often no one objects, because people realize when that statement is made by a member on the floor, primarily someone who is managing that piece of legislation, that we must recognize that those people have had their say, so under unanimous consent, let's limit the debate. That can be made under an open rule process, and often has.

But specifically, in answer to your question, my real concern is that I focus on this issue of accountability. There has been a desire on the part of the majority leadership to not face up to some tough issues.

An example of what was considered probably a dilatory item: we saw an amazing thing take place on the floor of the House last night when nearly 100 members changed their votes on an issue, which may have been designed. I didn't speak to the author of that amendment on dealing with immigration, but it may have been designed to put some people on the record.

But, I think that we have had more than a couple of times where the majority leadership has prevented us from having the chance to really go on record on some tough issues that we would like to face. That is what has led to this high level of frustration. I think that we are starting to have it wind down, with this issue of the first open rule.

In fact, as this hearing began today, I was scheduled to manage the second open rule of the 103d Congress. I chose to stay here. One of my Rules Committee colleagues managed it. I am optimistic about moving in the direction, as Chairman Moakley said, of more open debate. I think the issue that Lee Hamilton raised before he left was an important one. If we don't have completely open rules, we should at least allow every single area of an issue to be debated, so that we don't foreclose people who represent 600,000 constituents here from having the opportunity to at least be heard and have their ideas considered.

Ms. HOLMES NORTON. This is an issue, perhaps this is the academic in me coming out, where the bare statistics don't help me to understand the difference, why the disparity would be so great over a relatively short period of time. We have had a number of scholars before us, and it would be very interesting, it might be somewhat complicated research, but it would be very interesting to try to figure out what happened in the 95th Congress that was so different from the 102d Congress, and what happened along the way so that these numbers began to contract in the way we have seen them. Bare numbers don't inform me, at least, sufficiently of the cause. It only informs me of the result.

Mr. DREIER. I sometimes put on a pretty partisan hat, Eleanor, and I will say that Lord Acton was right when he said, "Power cor-

rupts, and absolute power corrupts absolutely." It seems to me that as we moved through four decades of one party control of this institution, it has gotten us to a point where people have felt that our ideas are the right ones. They really don't need to be fully debated.

Up until this bill we considered on competitiveness, 100 percent of the rules were restrictive, the ideas that came forward were, as Chairman Moakley said, items that had been vetoed by President Bush. I have argued that with so many new members—a fourth of our institution is new members—even though they may have followed the debate in the last Congress and talked about it during their campaigns, they should have had the opportunity to participate in those issues, like Motor Voter, Family Leave, the family planning issues, those items that had been vetoed by President Bush, and that your party wanted to put through as quickly as possible.

I can understand that you want to take those items which President Bush had vetoed and put them through, but it seems to me that a better way to have done it, a more fair way to have done it, would have been to allow for more open debate.

Ms. HOLMES NORTON. We have seen the decline of bipartisanship in this House, although these certainly are not the most polarized moments in the House of Representatives. We need to know more about these differences.

Your testimony, Vice Chairman Dreier, was very thoughtful, as it always is.

Mr. DREIER. Thank you very much.

Let me just say in closing that the one issue that I want to get to here, other than accountability, is this point of if we change the rules, I am all for them, but let's have rules that stick, and let's have a super-majority put into place if we are going to waive these rules.

Thank you all. It's an honor to be able to be here.

Ms. HOLMES NORTON. Thank you very much.

I will return the Chair to the gentleman to whom it rightly belongs at this time, Mr. Dreier.

Mr. DREIER (resuming Chair). We're very pleased to welcome two of our Republican colleagues, Representative Deborah Pryce, and Lincoln Diaz-Balart, to the hearing this morning. They are freshman members. They are on the Republican Leader's Task Force on Deliberative Democracy, on which I have been privileged to serve.

Ms. Pryce is from the State of Ohio, and serves on the Banking and Government Operations Committees. Mr. Diaz-Balart represents the State of Florida, and is on the Foreign Affairs and Merchant Marine and Fisheries Committees. We thank you both very much for being here, and anxiously look forward to your testimony.

Why don't we begin with you, Ms. Pryce?

Ms. PRYCE. Thank you very much. It is our pleasure to be here. I want to thank you for the opportunity, but I will defer to my colleague, Mr. Diaz-Balart, because he has a radio opportunity at noon.

Mr. DREIER. He just pointed to you.

Mr. DIAZ-BALART. I appreciate her introduction. I would accept the opportunity.

Mr. DREIER. We look forward to hearing first from Mr. Diaz-Balart.

**STATEMENT OF HON. LINCOLN DIAZ-BALART, A U.S.
REPRESENTATIVE FROM THE STATE OF FLORIDA**

Mr. DIAZ-BALART. Thank you, Mr. Vice Chairman and members. It is a pleasure to be here with you this morning.

It has been an interesting experience these last 4 months being, as Congresswoman Pryce and I are, new members. It has been a very intense learning experience. Among the most interesting experiences has been dealing with the rules of this august body, the most distinguished and prestigious representative body in the world.

Members, the closed rule situation is one that upon arrival in Congress, I was impressed by the fact that contrary to what I had thought would be the case, it was extraordinarily prevalent. I have read some of the history of this body, and recognize throughout that study that one of the driving forces behind controlling debate has been the argument that efficiency, the efficient running of the body, has required it. That has to be countered, obviously, with fairness. It has to be balanced, rather, with fairness.

The prevalence of the current practice, I think, has reached a situation where the argument that it theoretically is based upon efficiency, or is driven by efficiency, far out weighs the position of the argument that it is driven by fairness.

I come from a state legislature, Florida's legislature. I served in the House, in the Senate. The House was more similar to the experience here, because there are 120 members of the Florida House, so it was more similar than the very small State Senate, which was like one of our committees here in Congress, limited to 40 members. Yet, I remember that in the House, even though the majority managed to run it quite efficiently, amendments were permitted on the floor on every bill.

Now, sometimes, as a matter of fact oftentimes, the majority would make the motion which would be accepted to limit debate, sometimes quite extremely, on amendments. There were amendments that were limited to 5 minutes of debate; two and a half minutes per side. But I do not recall ever a motion being made, and certainly not accepted, to prohibit outright debate, and never did I experience the situation where a member could not propose, at all, an amendment. That was something that was simply not within the realm of my experience until I arrived in Congress.

I recall reading in a history of the House of Representatives the origin of the 5-minute rule. It originated based on the argument of efficiency. I can see, obviously, the logic to that.

Now, the prevalence, I think it is extreme, and even more so I think that with the existence of the possibility of a limitation of debate, of time on debate, I really think that it constitutes an affront to an elemental sense of the rule of law to say that amendments cannot be permitted.

Democracy, Mr. Vice Chairman and members, I think requires, obviously, rule by the majority. The majority has to be able to implement its ideas. However, it also requires intrinsically, respect

for the minority, whether it be a minority of 49 percent, or a minority of one member of Congress. It is indispensable for that minority to have the ability to express himself or herself, on behalf of his or her constituents.

So, I think our plea, and Congresswoman Pryce and I have been discussing this most intensely with our colleagues, in essence would be we recognize the need for efficiency. We realize that in this last experience that we just finished last night, or yesterday sometime—I don't even remember what time—of voting finally on final passage in the first bill that was permitted to have an open rule, perhaps would say, "Aha, look. They fell into the trap." I think many of my colleagues did fall into the trap. I think the trap was that due to the pent up frustration of the prevalence, almost on a unanimous basis, of the closed rule, the first opportunity they have to introduce amendments perhaps insufficient self-restraint was shown. That is human nature.

I think that if we can achieve a more prevalent situation of openness, there will not be that deep pent up frustration, and people will show self-restraint. The bottom line is that the majority has the right, and should have the right to limit the time of debate, but not to limit the ability to present amendments. I think that is a fundamental violation of the essence of democracy. I think that if one were to study our system in a comparative way—all systems that are human, obviously, have flaws—but I would say the greatest flaw that I have, as a new member, been able to see in our current practice is the excessive stifling of the ability of the minority to present amendments.

[The prepared statement of Mr. Diaz-Balart is printed in the Appendix.]

Mr. DREIER. Thank you very much.

Ms. Pryce?

STATEMENT OF HON. DEBORAH PRYCE, A U.S. REPRESENTATIVE FROM THE STATE OF OHIO

Ms. PRYCE. Thank you, Mr. Vice Chairman.

Let me begin by thanking all of you for the opportunity once again, to be here. Examining changes to this venerable institution is a significant challenge, and a responsibility. I commend you all for your dedication to this effort. I know you have been at it a long time, and have heard a lot about many, many topics. I am here today mainly to address the open rule that we would like to see changed on the floor of the House.

Also, I would like to take a moment to recognize the contributions of my colleague, Jennifer Dunn, and her freshman voice on this panel, I believe, is truly significant.

Mr. DREIER. We thought she was a senior member here.

Ms. PRYCE. Perhaps, if she can convince you that she is, that is all the better, because she has done a good job inside our group as a freshman, and representing us on this panel as well. I thank you for your efforts.

As you may know, unlike my colleague, Congressman Lincoln Diaz-Balart, I did not come to the House of Representatives with any previous legislative experience. My experience comes from a

legal background. I served as a prosecutor, then as a judge. Because I was a relative outsider to this legislative process, I felt I was in an unique position to better understand the growing dissatisfaction among voters across America in the way Congress conducts its business.

Achieving meaningful Congressional reform was a theme that I emphasized strongly in my campaign. I saw my victory as an opportunity to work for the kinds of changes necessary to improve the American's confidence in their national legislature. If we learned anything from last year's election, it is that the American people expect us to have our own House in order.

In an effort to respond to that call, the Republican and Democratic freshman classes each introduced a comprehensive set of reform proposals early in the session. I am hopeful that the efforts of these freshman classes, and your deliberations on this committee, can combine to bring about genuine Congressional reform during the 103d Congress.

While Lincoln and I are pleased to come before you as representatives of the Republican freshman class, we are also here on behalf of the Republican Leader's Task Force on Deliberative Democracy. That constitutes several members, and its task is simple: to educate members and the public about abuses of the democratic process. Our message is equally simple: the American people can be better served by a Congress which represents the rights to free and open debate on the merits of all issues.

The Task Force has up to now focused on the need to increase the number of opportunities in which members can offer amendments to major legislation being considered on the House floor. By refusing to allow bills to come to the floor open for amendment, millions of citizens are literally disenfranchised when their representatives are prevented from offering various amendments.

When members of Congress are elected with the expectation that they will be exercising their rights as law makers on behalf of their constituents, only to be told that they are not to fully participate in the process, there is something seriously wrong with the democratic scheme of things in this body.

On April 22, Deliberative Democracy Task Force released a brief report assessing the state of deliberative democracy in the House today. We feel very strongly that true deliberative democracy, the very process on which responsible representative government depends, is in a dangerous decline.

In the report is a chart which shows that for every Congress since the 95th, the number of open rules as a percentage of total rules granted has steadily declined. Some would say this is declining at an alarming rate.

For example, in the 95th Congress 85 percent of all rules granted were open. In the 99th Congress 57 percent were open. In the 102d Congress, that number dropped to 34 percent, and so far this year, we have had only one open rule.

I would like to take a moment, though, to commend the Rules Committee for granting an open rule to the National Competitiveness Act, H.R. 820. It may have taken the House some time to get through this one bill, but as former Speaker Sam Rayburn once put it, "Not all the measures which emerge from the Congress are

perfect, not by any means, but there are very few which are not improved as a result of discussion, debate and amendment. There are very few that do not gain widespread support as the result of being subject to the scrutiny of the democratic process."

By focusing on educating the voting public, the Task Force hopes to raise the level of awareness and understanding of where the democratic process is headed in the House. In an increasingly competitive world community, we need to foster the kind of deliberative process in which we are all involved in developing the best possible laws under which we and our constituents are proud to have lived. And so I would encourage this committee to take a serious look at how granting more open rules can bring about substantive improvements to major national legislation.

It is true that the American people voted for change and an end to gridlock. But they don't want us to end gridlock at the expense of democracy or by diminishing the scrutiny of the democratic process.

When Ross Perot spoke to the Republican freshman class yesterday, he reminded us that the American people are watching this institution very closely now. They want, and they expect, a Congress which crafts its policies in a thoughtful, deliberate manner, and they expect their elected representatives to be able to improve legislation at all points along the process; in subcommittee, in full committee, and ultimately on the floor of the House.

At a recent gathering in my district, several leaders of the business community asked my why no member had offered an alternative to the Family and Medical Leave Bill based on tax incentives rather than federal mandates. I did my best to explain that just such an amendment had been offered, but that the Rules Committee did not allow it to be debated on the House floor when it came time to vote. When constituents expect us to debate issues thoroughly, it's difficult for members to explain to them why we are not given this opportunity.

In closing, let me say that I recognize that reaching agreement on promoting freer and more open debate will not come easily. Although it is one element of a much broader effort to make representative government in the House truly representative, moving toward a policy of more free and open debate will very likely raise the level of esteem in which the American people hold this institution, and in my mind that is all important.

As I said at the outset, this committee has a heavy responsibility to recommend reforms to Congress and I commend you for the work you are doing. I appreciate having the opportunity to share my thoughts. I think I can speak for my colleagues in the freshman Republican class in saying that we are more than willing to work with our friends across the aisle to bring about meaningful congressional reform.

Thank you.

[The prepared statement of Ms. Pryce is printed in the Appendix.]

Mr. DREIER. Thank you very much, Ms. Pryce. Let me say to both of you, thank you very much for your excellent testimony and the leadership you have shown. I have been privileged to serve with you on the Task Force on Deliberative Democracy. You are

right, Deborah, Jennifer has done a superb job, even though she is leaving now, on the committee.

[Laughter.]

Mr. DREIER. Your testimony was right on target. You were extraordinarily freshened in your use of Speaker Sam Rayburn's quote. I want to compliment you on that.

Mr. Emerson?

Mr. EMERSON. I have no questions or comments other than to say that I think you both made outstanding statements, and articulated so well the concern that many of us have for the need for open rules.

I don't think anyone who understands anything about the history of legislative bodies would argue that they necessarily should be efficient. But, Mr. Diaz-Balart, you are absolutely right, they should be fair. I don't how, other than an open rule, and employing the 5-minute rule in conjunction with it, we can gain the goals that the two of you are speaking to so eloquently.

There have to be some constraints. We can't go on interminably. It would not be well if obstructionism could take hold and prevent the orderly flow of business. We have to have some mechanism to prevent that from happening. Legislation does have to move, but I think that in fair rules that we can all agree to, therein lies the answer.

You both made very eloquent, excellent statements in support of the position, certainly to which I adhere. Maybe that is why I think your statements were so profound, because I agree with them so much.

I want to say one thing. I want this on the record. There have been many references here this morning to the piece of legislation just concluded by the House, that it is an example of why you can't trust us under an open rule because we are dilatory. Baloney.

It is a well-known fact that the majority leadership has been using that bill as filler over the course of the last 2 weeks, because other things are not yet ready to come to the House. So, let us be honest; that is what we must be, up front as to why the bill took so long. It was that no one was under any pressure to get done with it. They needed something to occupy the time of the House.

The other thing was that they said that we are offering all these amendments that have no point or purpose. Well, as many Democrats offered amendments as Republicans in the course of the deliberations on the bill. Yes, there was a time, some contention, about some of the amendments. As matter of procedure yesterday afternoon we got into a pretty good snarl, but it was not an unreasonable issue that was raised. It does seem like what was raised was something that we, as a deliberative body, should be raising questions about, certainly procedurally.

So I don't think the exercise that we have been through is a very good reason as to why we should not have open rules in the future. Everyone familiar with the legislative process knows that the majority leadership could have moved that bill a lot faster had they wanted to, but they didn't want to. It is unfair to say that it didn't move faster than it did because dilatory tactics were employed. That is simply not the case.

Which brings me back to a point that I make very often in this committee, which you don't have the opportunity to hear. We really ought to concern ourselves with addressing reality. Congress is always to ready fix the perception of something. I maintain if we dealt with reality, the perceptions would take care of themselves.

Thank you both very much for your statements.

Mr. DREIER. Thank you very much, Mr. Emerson.

Mr. Reid?

Senator REID. I am really concerned about that radio program. I don't have any questions.

[Laughter.]

Mr. DREIER. It started one minute ago.

Mr. DIAZ-BALART. That is called camaraderie.

Mr. DREIER. Thank you both. Your testimony has been very helpful, and will be included in the record. You got total agreement, certainly from the people up here.

Mr. DIAZ-BALART. Thank you.

Mr. DREIER. Our final panel today consists of two distinguished scholars, Steve Smith and Barbara Sinclair.

Dr. Smith is a professor of political science at the University of Minnesota, and has been a senior fellow at the Brookings Institution. He is the author of "Call to Order; Floor Politics in the House and Senate," and other books about congressional politics.

Dr. Sinclair is a professor of political science at the University of California at Riverside. She is the author of "Majority Party Leadership in the House of Representatives," "The Transformation of the United States Senate," and numerous other publications.

Let me say it is a privilege to welcome you both here. We look forward to your testimony.

Ms. Sinclair?

STATEMENT OF DR. BARBARA SINCLAIR, UNIVERSITY OF CALIFORNIA, RIVERSIDE, CALIFORNIA

Ms. SINCLAIR. Members of the Joint Committee, thank you for inviting me to discuss floor deliberations and scheduling.

You have heard other witnesses who are far more expert than I in the details, so I am going to address broader questions, and do so fairly broadly, becoming specific only in selected instances. I am going to summarize my prepared statement radically, given the hour.

What criteria should we use? We always have to start with that question. I think we do want arrangements that make efficient use of time, but certainly more importantly ones that promote sound decision-making.

There isn't however a total consensus on what constitutes sound decision-making. A number of the prominent controversies that we have heard this morning and in days past reflect quite distinct notions thereof. There is considerable consensus that sound decision-making requires true deliberation and informed debate.

I am going to be slightly contrary and argue that it really is unrealistic to expect deliberation, as that term is frequently used, to take place on the floor of either chamber. I think what people often imply when they use the term deliberation is that process by which

a group people get together and sort of work and talk through a problem, and evolve their own positions as they go along. I think that kind of nonlinear, free-form process, if it is going to take place, is going to take place in subcommittees, and maybe committees.

What we can and should expect on the chamber floor is informed and informative debate. Now, however, if we think deliberation is valuable, and that we want it to take place where it can take place, then I think you need to keep in mind that the decisions that you make about floor scheduling are going to affect committee processes, particularly with respect to time, which is obviously the most critical precondition to deliberation.

So, let me turn to the House and, very quickly, matters of chamber scheduling and time use. The House of the 1980s and 1990s tends to be in session fewer days per Congress, but significantly more hours per day than the House of the 1960s and 1970s. The trade-off between the number of days and number of hours per day is pretty obvious. The change in the mix is presumably a response to members' wishes.

But I think the current mix contributes to the kind of perpetually frazzled state that a lot of members report. So, I'd urge the Joint Committee to at least consider recommending that the House experiment with a schedule of 3 weeks in Washington, and a week in the district, with those Washington weeks being 5-day work-weeks.

This schedule would yield more days in session, providing much needed time for committee work, and especially connected time which is so valuable. It would really do so without reducing the amount of time members have in their districts, in a really major way, because for people who live far away, much of that extra time would come out of travel time.

Certainly the leadership needs flexibility. Such a schedule is going to work only if that Monday through Friday is pretty sacrosanct, that it is changed only under truly extraordinary circumstances. A problem in implementation is the very long primary season every other year, so I would suggest that at least you try it in non-election years.

How would you use that time on the floor, of course, is very important. What constitutes a waste of time is very much in the eye of the beholder.

To summarize, the House uses a lot of time taking recorded votes. On the other hand, it uses a lot less time doing that than it did in the mid and late 1970s. Possibly you might want to look at nuisance votes, and consider whether some kinds of restrictions are appropriate. But of course, making choices and doing so on the record, so that you can be held accountable is an important part of your job.

These issues are secondary compared to the central question of whether and to what extent standard operation procedures on the House floor promote sound decision-making. In recent years, controversy has focused on the special rules that are used to bring significant legislation to the floor. As we have heard so much this morning, rules now are more likely than they were in the mid and late 1970s to place some restrictions on the amendments that members may offer on the floor. The minority party does believe that

this is in many ways anti-democratic, and that it prevents the House from working its will. Yet, of course, every rule is subject to approval by a majority.

Formal theorists in political science have shown that for any bill of more than the most minimal sort of complexity there exists an alternative that can defeat it, and then an alternative that can defeat that one, *ad infinitum*. What this means is that legislators' preferences are not, and cannot be, the sole determinant of legislative outcomes, because there is not single choice that a majority prefers to all others in reasonably complex situations. So, the legislative outcome is always going to also be a function of the body's rules.

So, rules inevitably advantage one sort of majority over another. The House is a majority ruled chamber, but you must decide what sort of majority should rule. Really your only basis for doing so is your conception of what constitutes sound decision-making.

Specifically, should rules favor stable, organized majorities, or should they favor transitory majorities that form on a piece of legislation today, and dissolve when a different issue takes center stage tomorrow? If one believes that coherent policy is more likely to result from stable, organized majorities, and further that stable, organized majorities can be held accountable in a way that free-forming, transitory majorities cannot, then one should not place constraints on the use of special rules.

Complex and often restrictive rules have become powerful and flexible tools for managing the legislative process on the House floor. They can provide order and predictability. They can be used to assure that floor time is apportioned in a reasonably sensible way. And they can focus debate on the major alternatives, and away from minor or side issues.

I am arguing that one's conclusions about the appropriate form of special rules depends upon one's notions about what sorts of majorities are likely to make better policy, and therefore should be favored. But they also depend on what sorts of decisions you believe can and cannot be made well on the House floor.

I'd argue that the membership as a whole can and should make the big decisions. It can and should choose among major alternatives. But, a body of 435 should not get involved in a detailed re-writing of legislation on the floor, via a multitude of individual amendments. It is too large and unwieldy; often the necessary expertise is lacking; and almost always limited time precludes a full consideration of the impact of the proposed changes.

If you think the membership should make the big decisions, then most rules should allow consideration of one or more major substitutes. And in fact, most rules do just that.

I would argue that placing significant limitations on the majority's ability to use rules creatively would make coherent and responsible policy making more difficult in the House.

Let me speak for just a moment about the Senate. For at least 20 years U.S. senators have been complaining about Senate scheduling and floor procedure. If current senators truly want more efficient time use, greater predictability, and a better quality of debate on the floor, they must make some changes in Rule 22.

The Senate's special character and its special problems are based upon unlimited debate. A lot of people have argued that party leaders should simply stop deferring so much to individuals in legislative scheduling and the use of floor time, and that they should call people's bluffs. That, I think, can go only so far. A fix that relies primarily upon senators self-restraint is unlikely to really fix the problem, because the incentives for using those prerogatives are just so great.

Possible changes in Rule 22 can range from the modest to the radical. Certainly making the motion to proceed non-debatable seems very sensible. My colleague, Steve Smith, has a straight track proposal that I would urge you to take a serious look at.

A little bit more radical proposal would change Rule 22 so that the longer the measures debated on the floor, the smaller the super-majority needed for cloture. That would give the minority the floor time to make its case, but it would not allow it to block action on majority supported legislation forever.

You all have a big job to do, and I wish you well.

[The prepared statement of Ms. Sinclair is printed in the Appendix.]

Mr. DREIER. Thank you very much, Ms. Sinclair. Your testimony is very helpful.

As you look at the 5-day work week for the House of Representatives, I'd wonder, since you've talked about extraordinary circumstances, would you consider the Kemper Open to be an extraordinary circumstances?

Ms. SINCLAIR. As a non-golfer, no, but then I am not a member either.

Mr. DREIER. Thank you very much.

Mr. Smith?

STATEMENT OF DR. STEVEN S. SMITH, UNIVERSITY OF MINNESOTA

Mr. SMITH. Mr. Dreier, and members of the committee, let me first observe that many of the problems of floor activity originate off of the floor. I think you should see your budgeting, appropriations and authorizations, the realignment of committee jurisdictions, and multiple referral, alterations in the congressional schedule, the number of committee and subcommittee assignments, the daily committee and floor scheduling practices, and other proposals in the context of floor activity.

For example, we know that the pressure of limited time is a force behind obstructionism in the Senate and restrictive rules in the House. Moving to a 2-year cycle for budgeting and appropriations, along with moving annual authorizations to a 2-year cycle, will relieve some of the pressure on floor schedules in the House and the Senate.

Or, more radically, Congress could establish a national congressional primary date, which would relieve floor leaders of the burden of scheduling floor votes around the primaries that occur weekly between March and June, and then again in the Fall, every even numbered year.

My point is that you should keep a broad view of how to improve floor activity. Direct changes in the distribution of parliamentary rights in the House and Senate rules may not prove as important or as feasible as changing the nature of the inputs to floor decision-making or altering the incentives for members to participate on the floor in one way or the other.

Let me first take up the House. The central issue is finding ways to achieve a new balance between allowing the majority to act with dispatch, and the minority's right to be heard and offer alternatives. Over the past 2 decades, this balance has shifted in favor of majority interests. This is a product of both non-partisan and partisan factors. With respect to partisan consideration, frankly I find plenty of blame to be attributed to members of both parties.

As a general matter, I believe that the majority's right to adopt special rules to suit its needs should not be substantially curtailed. To be sure, any House majority carries a burden of procedural fairness, as well as enacting policy. The very legitimacy of congressional action hinges on the observance of processes that are widely recognized as fair.

But throwing additional obstacles in the way of the majority will undermine the House's ability to respond to new policy problems and changing public demands. Nevertheless, I believe that majority discretion can be maintained while taking some steps to insure that certain party rights are observed, preserving a minority right to offer an amendment as a part of a motion to recommit, and preserving individual rights to periods of time to study major proposals before being forced to cast votes on them.

I recommend that the House adopt two sets of rules. First, the House should guarantee the Minority Leader, or his designee, the right to offer a motion to recommit with instructions. Amendments ordered by motions to recommit that have not been considered in the Committee of the Whole, should be required to be printed in the record at least one day in advance. Actually, I think, if Chairman Moakley is offering the Republicans a 2-hour wait, they should grab it and run.

Second, the House should require that the 1-day layover rule for special rules apply to the text of amendments explicitly placed in order by the special rule as well. The House should require that the text of such amendments be printed in the record, or in a Rules Committee report, at least one day in advance of floor consideration, if the amendments have not been printed in the bill, or in a committee report, previously.

In addition, the Joint Committee should urge the Rules Committee not to report rules that waive layover requirements for committee and conference reports except when absolutely necessary. I do realize that circumstances arise with some frequency that necessitate waiving layover requirements for reports, so I oppose any requirement of an extraordinary majority for waiving report layover rules in a special rule.

Let me make two additional comments. First, about the House schedule: I do think it would be wise for the House to move to a 3-weeks-in, 1-week-out schedule. Let me just add a note to Barbara's comment. The arithmetic is unimpeachable. If you are in for 3

weeks, 5 days a week, you have 15 days of session in any 4 week period. Currently you tend to have about 12.

That gives you 3 more days; it eliminates some of the pressure to restrict amendments and to limit debate. Moving to a 15-day-per-month floor session, I think, would relieve some of that pressure, and make it easier to structure more meaningful debate on the House floor.

Far more serious problems confront the Senate. Hyper-individualism, and both petty and partisan obstructionism have created near chaos from time to time on the Senate floor. Let me emphasize one point, the condition of decision-making processes on the Senate floor should be a matter of deep concern to all members of the Joint Committee, House and Senate alike, and to the general public.

I think that the talents of many senators, not the least of which are floor leaders, are squandered by the unpredictable stop-and-go character of Senate floor action. My diagnosis of the problem is simple enough. The external orientation of senators, which are electoral activities, fund-raising, speech-making, lobbying, running for president, and other opportunities have fundamentally altered the context of floor action in the Senate.

That changing context has made dysfunctional many rules and practices that once seemed well-adapted to senators' individual purposes and the Senate's collective needs. The possibility of a filibuster has forced more dependence on creative unanimous consent agreements, and the necessity of obtaining unanimous consent has added to the Senate practice of holds and enhanced petty, highly personalistic obstructionism.

Senate majority leaders have kept the Senate barely functional as an institution through extraordinary inventiveness and perseverance. They need help with new rules.

But, as we know, no material changes to the Senate's Rule 22 will occur in the short term. I consider my job, and I think it should be the job of the Joint Committee, to make the case for change and to generate some ideas about to change the Senate.

In my written statement I seek to place the claims about Senate tradition in the proper perspective. I find many of those claims to be inflated.

I would be dismayed, however, if the Joint Committee let go unchallenged some of the claims about the original design for the Senate. Let me emphasize, there is nothing in the Constitutional Convention, the Federalist Papers, or the Constitution itself that suggests that the Senate was expected to develop fundamentally different floor procedure than the House. It just ain't there.

There are several ways to change the Senate floor practice that would take the bite out of holds, lend more order to the consideration of floor amendments, and yet still preserve the ability of senators to conduct extended debate and offer non-germane amendments.

I offer what I think are a few original ideas, and would be happy to answer questions about others' proposals.

I think the Senate should create a straight track procedure—the label is meant to parallel the fast track procedures common in the

House and Senate now—for floor Senate action to limit debate and non-germane amendments for limited periods of time.

On a non-debatable motion subject majority approval, the Senate would return to existing rules. Before or after the Senate considers legislation on track, Senators' current rights would be preserved. And yet, I think that most debate on legislation would occur in a more controlled and predictable setting. Nothing would prevent cloture from being invoked before or after the consideration of legislation on the straight track.

But I think that when on the straight track, Senate floor activity would have a far more predictable and efficient character. The Majority Leader would no longer be prevented from moving to some structured debate and amending activity by objections from individual senators or minorities.

In addition, the Senate should reduce the bite of holds by making it more difficult for a single senator to object to a floor leader's request to call up the measure, limit debate, or limit amendments. In my view, the objections of at least five senators should be required in order to block such a request. If this were done, along with some curbs on obstructionist quorum calls, the disruption cause by petty, personalistic holds would be reduced.

In my view, the Senate should not adopt a rule requiring disclosure of the holding senator's identity, as has been suggested by some. In my view, this would recognize in the rules a right to place holds that does not now exist.

I offer more additional and detailed recommendations in my written statement, so let me conclude with an observation. The allocation of procedural rights in the House and Senate has seldom been altered on the basis of a commitment to any philosophical principles about parliamentary processes. Hard-nosed political calculations, along with the shifting balance of forces in each chamber account for the development of most of the rules the modern Congress has inherited from the past.

In ordinary times, this would mean that the natural proclivities of the House and Senate, majoritarianism in the House, individualism in the Senate, would dictate the outcome. But this is not an ordinary year. I think that there is a chance in a year when voting against reform is more difficult than in most, for the natural tendencies of the two houses to be tempered a bit in the interest of acting on the Nation's business while maintaining an open and fair process.

[The prepared statement of Mr. Smith is printed in the Appendix.]

Mr. DREIER. Thank you very much, Mr. Smith.

Mr. Emerson?

Mr. EMERSON. I thank you both for your statements. You present us with a lot of very interesting ideas that I hope we will indeed digest and discuss.

The three-week-on, one-week-off recommendation, of course, is not new. It has been employed in the Senate, and it is talked about. I think that is one idea that we probably will consider on this committee. But I want to go further than that. I don't think that is the answer. I don't think it is a panacea.

I think we need to develop some system whereby we do have 5-day work weeks here that can be relied upon, not deciding on Thursday that we are not going to be here on Friday, and maybe we will be back Monday or Tuesday of next week, if somebody calls us on the telephone. That sort of thing has actually happened this year. It is no way to schedule.

I think we need to have periods when committees meet. There should be a master schedule, certainly of the House, so we know what committees are going to meet when, so we can actually go to them, and not be in conflict with yet some other committee meeting which some chairman may have called at his whim that morning, wanting to get the members together to talk about his subject, but not with much notice, where committees meet and the House does not meet.

We could then have periods when the House meets and committees don't meet. Tuesday, Wednesday, and Thursday here we are very busy in committees. We get focused on something, the bells ring, we have to run to the floor. It is an enormous waste of time. We lose the focus of what we are doing in the committee. We try to focus what is going on on the floor, and I don't think we do either one very well.

Comment?

Ms. SINCLAIR. As you know better than I, the real problem is in having committee meetings when there is no vote scheduled on the floor, because often members don't attend.

Mr. EMERSON. That is why you have to have mandatory attendance.

Ms. SINCLAIR. Actually, I think that you can solve that fairly easily by instituting, if you are willing, a system where there really is good data on who attends committee meetings. If attendance were made easily available to the press, they would probably do exactly the same thing as they do with the floor, and it would be something that would be used to judge members' minimal dedication to the job.

Mr. EMERSON. That is a very good suggestion.

There are a lot of times even in mark-up in committees when there is not a majority there. We only have majorities for reporting a bill out. You were talking about the deliberative process. There is not much of a deliberative process in a lot of committees in mark-up sessions.

Then when you get down to reporting the bill, you are going to have a roll call if somebody demands it, and enough people say they want a roll call. A lot of legislation gets moved out of committee without a roll call, and it is a product of a not very deliberative process. Then it goes to the floor. No, it is not going to get a whole lot more deliberation there.

A lot of laws that come down the pike, with all deference to our excellent staff—and they are wonderful—there are a lot of laws that get on the books that members of Congress, I dare say, have never even read. The staff has conceived them, and I think they have probably done a good job. We rubber stamped it along the way. A bill may be reported out of committee; the proxies have been voted; members may not even have addressed the issue, be-

cause the committee chairman is voting the proxies of the majority.

There are things that this committee has to look at very, very seriously. You know we haven't even talked about the oversight function of the Congress. That is another thing that the public, I think, is concerned about—our lack thereof.

At the end of every bill we pass, every law, is that one line ringer, which I am sure you know—and we hereby delegate to x-agency the authority to implement this legislation with appropriate regulation. We don't go back and oversee the regulations as they are being implemented.

Mr. SMITH. Let me make one suggestion to follow-up on that. As you know, under the Legislative Re-organization Act of 1970, committee roll call records have to be made available to the public. But they are inaccessible. They are sitting in committee rooms in long transcripts.

I would favor a rules change that would create a congressional document that makes easily available committee roll call voting records.

Mr. DREIER. One of the things that we do in the Rules Committee, when we bring out a rule, this year we have reported the vote, by name, of those members and put it in the Congressional Record.

Mr. SMITH. Yes. I think that is a great improvement. There is a track record on this. When you moved to recorded voting in the Committee of the Whole, on the floor, attendance shot up. Right? Suddenly all of those teller votes that were being adopted by votes of 57 to 43, were replaced by votes with 99 percent attendance.

There is nothing like making easily available the voting records of committees. You don't need to just have attendance lists, just have the voting recording records available on an easy basis, so that the media, as well as the opponents have easy access to them. It would make all the difference in the world.

That would create a demand among the members to straighten out committee and floor schedules.

Mr. EMERSON. You are absolutely right. I can think off the top of my head, thinking back over the last 3 weeks, how many mornings there have been, usually Tuesdays, Wednesdays, and Thursdays, where I have had three different subcommittees scheduled for 10 o'clock in the morning. All you can do on that particular circumstance is to decide which subcommittee that day is dealing with the subject that is of greatest importance to you and your district. It shouldn't be that way.

I have often thought they schedule that way to keep it confused so nobody knows what is happening. I think the leadership has a much higher degree of control when that syndrome is prevalent, to the exclusion and the detriment of rank and file members.

Mr. SMITH. Of course, a 3-day-a-week schedule makes it virtually impossible to cram in all the committee and floor business that has to be accomplished. You need more days. There is really no excuse for not using more days of the week.

Mr. EMERSON. Think about what Ms. Sinclair said here. They schedule floor actions for Tuesdays, Wednesdays, and Thursdays in order to get members here to do committee work. They wouldn't be able to muster people in committees if floor action wasn't sched-

uled. That is why I think there has to be some mandatory attendance in-Washington rule considered by this body.

Mr. SMITH. The Senate, of course, has some relevant experience. I think that they found that the 3-weeks-in, 1-week-out was very, very successful. I find that turning on C-SPAN on the week in which they are not meeting, there is frequently a committee meeting, and while not all the senators are there, they are staying for awhile, because they are not rushing off to a floor vote.

Mr. EMERSON. Well, my time has long since expired. Thank you.

Mr. DREIER. Thank you very much, Mr. Emerson.

One comment I would make is something we have talked about, but not really today. Another solution to this is to dramatically reduce the number of committees in the Congress. We have all this pressure, the 3-day week, if we were to implement Plan F, as it was proposed through the CRS package, we would have eight committees per house of Congress. I think that also would be one way in which we would deal with it.

Senator Reid?

Senator REID. I, like obviously everyone else, have other places to be at this time, but in being here, listening to other testimony, I read the testimony of the two of you, and I felt compelled to stay because it is very, very good. I personally appreciate it.

I am not sure how taking attendance would help in the Senate. I serve on the Appropriations Committee, Environment and Public Works, Indian Affairs, Aging, Joint Committee to Reorganize Congress. I am chairman of the Task Force to find out what laws are going to apply to us in the Helsinki Commission. It wouldn't do any good. I can only be in one place at a time. We have to do something to limit the need for me to be everywhere at once.

I think it speaks volumes that you two scholars come here, and see what you have. You have one out of 12 from the Senate, and 2 out of 12 from the House. That doesn't mean that Chairman Boren, and all the rest, aren't interested in what is going on. It is just that they serve on committees just like I do. Probably some chairman has to report a bill out. They have to be there. It speaks volumes that what we have here today is the problem that is facing this institution. There is nobody here.

I think we could learn so much from the testimony that has been given here today. I would hope—and I think most of the people who aren't here are represented by staff—that each staff member would take the testimony of the two of you, and somehow condense it, or in a rare opportunity, maybe get their member to read the testimony. I think it would do well.

Mr. SMITH. Of course, we would be happy to speak to them, if they have time on their schedules.

[Laughter.]

Senator REID. Are you Professor Smith?

Mr. SMITH. Yes.

Senator REID. I was impressed with your statement, because you are the first I have seen who came out in bold print and said that most of the rhetoric about the Senate's tradition as a deliberative body is inflated. You, in a few paragraphs here, pointed out to my satisfaction that that in fact is a true statement.

If you look at a history of the Senate, the Senate wasn't set up to protect Harry Reid from Nevada; it was set up to protect Nevada, not me. We have kind of turned that around so that we are out protecting individual senators. As a result of that, we get the debacles that we have now.

I remember when I served in the House, we were trying to adjourn. We were finished, basically, with our work. I flipped over to the Senate, and I kept seeing these quorum calls. I graduated with a degree in political science. I served in government a lot of my adult life. You would think I could understand what was going on. I had no clue as to what was going on.

Most people have no clue what is going on. It takes being there in the Senate awhile before you have a clue as to what these endless quorum calls are. We had the parliamentarian of the Senate here a couple of days ago. I asked, "What is the biggest problem you see in the Senate." He said it is these endless quorum calls.

I think that if those members who aren't here on the Senate side would review the few paragraphs that you have outlined here, 4 or 5 in number—well it is a few more than that, maybe 10—to talk about why the Senate being a deliberative body is inflated. We, as you've indicated—and I had heard this before—did have the ability to move the previous question in the early days of the Senate. That was taken out without any debate because it wasn't necessary at the time.

I also think the statement that you have here quoting Henry Cabot Lodge, "To vote without debating is perilous. But to debate and never vote is imbecile." We have lots of debate, but when do we get to vote what we are talking about?

I also think that it is too bad that you didn't include in your statement, Professor Smith, your introductory statement. In that you tell us here today that we need to limit committee size. Didn't you say that? Limit the number of committees that members can serve on, and the number of subcommittees there are, and the number of subcommittees you could serve on. What did you say, do you remember, in your opening statement?

MR. SMITH. My point was that many of the items that you are taking up—I realize it is not the subject for today's discussion—in fact have important implications for floor activity. I find that much of the discussion of those proposals, like limiting the number of committee assignments, are sometimes seen too much in a vacuum. They should be seen in terms that are larger consequences for how the House and Senate operate, including the nature of floor activities.

Among the things that I would push, because I think it has important implication for the congressional schedule, is a national congressional primary date, some time in June, or some time in September. Most states still get by with September primary dates. Thus, in every even-numbered year this weekly schedule wouldn't have to start on Wednesday afternoon because members from Nevada, or California, or Oregon can't get back from their Tuesday primary.

That is something that I realize is perhaps out of the jurisdiction of the committee, but it points to the central problem here. Much of the change that occurred in the nature of House and Senate

floor decision-making is a product not of changes in the rules, or of abuses of the rules, or of new uses of the rules, but changes in the inputs and the incentives to use those rules in certain ways.

Senator REID. My time has gone, but on page 18 of your statement you list six different things that we should do in the Senate to improve the way we deliberate and arrive at a final result. I read, because I was on the floor when I heard Senator Mitchell lament as to what was going on in the Senate, and you have quoted Senator Mitchell. It really doesn't speak well of the Senate that here is a brilliant man, a former prosecutor, federal judge, a fine legislator, that is begging the other 99 members of the body to do something because he is powerless to move on.

I hope that the 12 senators here, six Democrats and six Republicans, will come forward with some strong measures to help the Majority Leader, whoever that man or woman might be in the years to come, to have some power to move legislation.

Let me close, Chairman Dreier. I didn't, Professor Sinclair, talk a lot about your paper, because you spent most of your time, orally, talking about the House. But there is a lot of meat in it. I appreciate your statement as well as Professor Smith's. I stayed here because I wanted to publicly congratulate and applaud both of you for your scholarly work to try to make this institution more responsive to what the American people need.

Mr. SMITH. You are very kind.

Ms. SINCLAIR. Thank you.

Mr. DREIER. Thank you very much, Senator Reid, that is very nice. I certainly associate myself with those remarks.

I'd like to pursue two particular areas that were in your testimonies as they relate to the House. One of them related to my earlier testimony, which I gave. That has to do with this issue of the use of the super-majority.

You, Mr. Smith, were talking about extreme circumstances for the use of waivers, but you indicated that you opposed the idea of a super-majority. The problem that I have is how do we make that determination as to what an extraordinary circumstance is?

Now, I quoted Lord Acton a little while ago, and what we see is an arrogance which a determination that that waiver is necessary to prevent us from being accountable on certain issues. That is the reason that I have come to the conclusion that it is essential for us to have a super-majority, whether it is three-fifths or two-thirds, or whatever, to waive these rules.

You proposed rules changes; we've had other academics here who have proposed rules changes; many of my colleagues have proposed rules changes. I don't have a problem with the idea of modifying the 3-day layover provision or these other items, but my real concern is adherence to those rules. That is the reason that I have concluded that it is going to be difficult for us to actually stick to those rules without the teeth of a super-majority.

Mr. SMITH. I'm sympathetic.

Mr. DREIER. Didn't you indicate that you were opposed to the idea of a super-majority?

Mr. SMITH. For the purpose of waiving the 3-day layover rule for committee reports, I thought that there are many circumstances, particularly at the end of the session.

Mr. DREIER. Then we impose what we call marshall law rule, in which we allow those things to come up immediately. We actually have had marshall law rules so far in the 103d Congress, you know.

Mr. SMITH. Right. I think one of the other problems you face, of course, is that there are more and more deadlines that the House has to meet for passing certain kinds of legislation. Many of those deadlines are unreasonably severe. I think it would be a problem in many instances if a full 3-day layover requirement was adhered to.

You might consider saying that if anything less than a 1-day is proposed that a two-thirds requirement be imposed for that, even though reducing it from three to two to one might be permitted by majority vote. I would favor that.

I do favor two-thirds requirement for waiving the rule permitting the Minority Leader to offer a motion to recommit with amendatory instructions. I think that should be very carefully preserved.

But I would go beyond what you suggested, Mr. Dreier, and institute some layover requirements for alternatives substitutes of such things that are negotiated between committee leaders after the committees have reported, just before they walk into the rules committee and say, "Please put this substitute in order." Nobody has seen the language. Perhaps it is down at the legislative counsel. Maybe there is a photocopy floating around. But I think they should be subject to layover requirements as well.

In fact, I would like to see the text of amendments placed explicitly in order by special rules be available, at least a day in advance. What happens, of course, is the one-day layover rule, Rule IV, the special rule itself, but it puts in order certain amendments that are only mentioned by name in the committee report, which might actually be available by the time the House takes up the special rule on the floor.

I think that you have every right to insist that members of the House know what is in that committee report well in advance of being asked to vote on the rule.

Mr. DREIER. Let me pursue with you, Ms. Sinclair, and item that you mentioned. You talked about the problem that open rules creates whereby the floor action can circumvent the committee process, and I wrote it down on one of my notes here. I think you said it could be sort of unruly when we see people amending legislation without having the committee background that is necessary.

But I would respond to that by saying we, of course, see after we go through that open rule process, the conference committee between the House and the Senate. It seems to me that while obviously an overwhelming vote that has taken place in either body is certainly taken into consideration, many, many times we have seen measures which have passed by overwhelming margins in both houses, even, knocked out in conference.

It would seem to me that if there are problems with the open rule with amendments that are included, that the conference can address them. Then that conference report comes back.

Ms. SINCLAIR. Of course, you didn't have recorded votes in the Committee of the Whole until the early 1970s. If you look at what happened on the floor in the mid and late 1970s, you got this real trajectory. The number of recorded votes shot way up.

Often I think what happened was that the House drowned in a sea of picky little amendments, and the big choices got lost. That, I think, is as much a concern as wasting time, though it is a concern of amendments simply being ill-understood if it is late and there is another amendment, and it is not available in a printed form, and everybody is yelling about, and the like.

I am arguing for structure, and certainly for information before people vote.

Mr. DREIER. I certainly have no difficulty with that.

You were here during my testimony. Was there anything that I said that you would like to comment on, in my remarks? Are you sympathetic with our concern about a lack of open rules, and the need to have a greater degree of accountability?

Ms. SINCLAIR. There are different ways of looking at accountability. That was the argument here, that what sort of majority are you going to give an advantage to? Any set of rules, meaning either rules from the Rules Committee or the broader rules that the House operates under, are going to advantage some sort of majority over another. I would argue that you get more accountability as well as more responsibility if your rules tend to favor stable, organized majorities, than these very free-forming ones that by the votes are ready to hold somebody accountable, that majority is long gone.

Mr. SMITH. I am concerned and I am not sure what to do about it. I think that by making sure—and I realize this hasn't been a big problem in recent months, because the Rules Committee has changed its ways, at least temporarily, on the motion to recommit with instructions—but I think if that was guaranteed, and it was provided to the minority or his designee, that the Rules Committee would come to accommodate the Republican leader's amendment in the Committee of the Whole.

There would be no reason to put off discussion of it, somewhat artificially, to the final motion before a final passage. I think the majority will see a lot of reason for accounting that in the amending process in the Committee of the Whole. I think that is essential. It lends some organization to the minority amending process that sometimes has been lost.

What I didn't mention is I think a lot of what has happened in the House has been a product of declining deference to both Republican and Democratic committee leaders. It is the committees who have lost control over the process of the flow of legislation within their jurisdiction.

I would like to see some way—and I think by giving the power to the Minority Leader to offer amendatory instructions would help this—of increasing the flow of policy alternatives through the ranking minority members on the various committees. I think that would enhance their role. They would be the natural conduit to the Minority Leader, and I think it would substantially increase the legitimacy of Republican claims for a right to offer amendments.

Mr. DREIER. Let me say I thank you both very much for your testimony, for being here.

In response to Senator Reid, unless you think otherwise, I appear to be the only member here with nothing else to do.

[Laughter.]

Mr. DREIER. But I should say that in five minutes I have a Rules Committee meeting, so I am going to be going up there to meet.

Let me say once again that your testimony has been very helpful, and will certainly be used as we continue our deliberations.

Thank you all very much. The committee stands adjourned until next Tuesday.

[Whereupon, at 12:52 p.m., the committee adjourned, to reconvene at the call of the Chair.]

FLOOR DELIBERATIONS AND SCHEDULING

TUESDAY, MAY 25, 1993

UNITED STATE CONGRESS,
JOINT COMMITTEE ON THE ORGANIZATION OF CONGRESS,
Washington, DC.

The committee met, pursuant to call, at 2:20 p.m., in room HC-5, The Capitol, David Dreier (vice chairman of the committee) presiding.

Mr. DREIER. The joint committee will come to order.

We are very pleased to be concluding our series of hearings on the issue of Floor procedures. Our first witness this afternoon is one of our extraordinarily distinguished and hard working Members of this Joint Committee, Representative Bill Emerson.

Mr. Emerson has been serving the 8th District of Missouri in the House since 1981. He currently serves on the Agriculture and Public Works and Transportation Committees. He has testified before this committee last month, and we hear from him at almost every hearing, but we are especially pleased to hear him from this side of the table.

Please proceed, Mr. Emerson.

STATEMENT OF HON. BILL EMERSON, A U.S. REPRESENTATIVE FROM THE STATE OF MISSOURI

Mr. EMERSON. Mr. Chairman and my colleagues, I do appreciate very much your indulgence in hearing me from this side of the witness table. My goal today is not to offer the be-all, end-all solution to our scheduling problems, but to ensure that this topic remains on the table for very serious discussion, because I believe that if we can bring about an effective resolution to this particular problem, that the resolution of many other problems will fall into place.

One of the recurring themes in the testimony this committee has heard so far is the frustration Members experience with schedules. I believe that many of the reform proposals that we have heard so far stem from this frustration.

I don't believe we would be talking about reducing the number of committees or the number of committee assignments per Member, unless Members were unhappy with their inability to be everywhere they are scheduled to be at one time. We would not be complaining about too much reliance on staff and not enough reliance on the expertise of individual Members if we were not faced with the phenomenon of what Senator Byrd terms, fractured attention.

As the current presiding officer of this committee knows, I had to leave a committee meeting in which he was presiding to come to this committee, at which you are also supposed to be presiding, but

you weren't here to preside in time, because the bells—because you were still presiding at the other meeting, and then the bells rang and we were disrupted, you know, once again for half an hour.

Mr. DREIER. And all those meetings have been going very smoothly.

Mr. EMERSON. Everybody lost their focus, and now we are trying to redirect our focus. So our fractured attention is largely the result of scheduling problems.

We wouldn't be decrying the need for more deliberation and discussion on the Floor if we had more time to spend on the Floor thinking about issues, listening to debate and formulating arguments.

Scheduling improvements will be integral to the success or the solutions we propose to other problems as well. For example, many Members have suggested a series of Oxford style debates to counter the lack of deliberation on the Floor. No matter how well these debates are crafted, they will not succeed if Members are scheduled so tightly that no one can attend.

In addition to reducing the frustration level of the average Member, scheduling reform is needed to inject some predictability into the legislative process. The Congress' inability to make a schedule and stick to it has serious economic consequences which are reflected in the decision-making processes of thousands of businesses across this Nation.

Instead of making sound, careful any considered economic decisions, businesses are often forced to join in the "will-they-or-won't-they-and-when" game, and try to second guess congressional action or inaction as the case may be.

Now, I propose that we address these scheduling problems by doing two fundamental things: First, proceed with fundamental reform of committee structure. We do need to reduce the number of committees and subcommittees, and we do need to cut back on the number of assignments per Member.

Second, we must acknowledge the fundamental reality that Members cannot be in two places at once. If we want to encourage better debate on the Floor of the House and encourage committee attendance and participation, the two simply cannot be scheduled simultaneously.

Perhaps we should have 2 to 3 weeks of committee work, during which time the full House will not meet. Then for the next week, the House could meet to dispense with matters that the committees have just reported. When the House is in session, in that scenario, the committees would not meet.

When Senator Byrd testified before us this year on February 2, I asked his opinion of this idea. He replied that in theory, it was a great idea. In his experience, however, he didn't think it would work, he said. Absent a threat of votes, the Senator told us that he found it difficult to keep Senators in Washington.

This is a very real obstacle under our current system. Last week, however, two scholars appeared here and offered a solution to that problem. We should publish committee votes. Currently, votes for most committees are technically available to the public, but from the testimony of Professor Smith last week, it sounds to me that

the task of digging out the records can sometimes require the determination of Sisyphus.

We should make it easier for the press, the public, and anyone else to find out who votes for what in committee. If Members are held accountable for their votes, there would be as much incentive to attend committee meetings as there is now to be present for votes on the Floor.

This change must go hand in hand with eliminating proxy voting. We don't have it on the Floor of the House, and as a result, Members make a very real effort to attend most votes. The House also has several committees which don't allow proxy voting; Rules and Veterans Affairs come to mind. These committees, these two committees in particular seem to work just fine. In fact, the Veterans Affairs Committee routinely has an 85 to 90 percent attendance rate, as Chairman Montgomery stated in testimony before this committee.

We also need to make the most of the time that we do have and this includes beginning work in January when we arrive here for the session, and working full 5-day weeks. We should devote time to oversight alone. Perhaps there should be 6 months of the year devoted primarily to legislating and 6 months devoted primarily to oversight, or it could be one year to legislating and 1 year to oversight.

The length of time is about as important as the fact that the Congress would be conducting strict oversight of the programs and projects we have already enacted. I think we do a terrible job in our oversight function, the Congress as a whole.

We frankly are passing new programs and projects all the time without reviewing carefully that the ones we have already passed are working very well.

We should also study emerging technology; there must be a means of creating a master schedule that is going to minimize conflicts. After all, major universities manage to schedule classes for tens of thousands of students. If they can't do—if they can do it, why can't we? Some conflicts are bound to exist, but when we try to squeeze five day's work into 3 days, particularly between the hours of 10 and 2, we are maximizing the potential for schedule conflicts.

If the House reduces the number of committee and subcommittee assignments for Members, publishes committee votes in a readily accessible manner, eliminates proxy voting and adopts a schedule where committees and the full House meet at separate times, I believe that we will see significant results.

Members will have fewer personal schedule conflicts, committee attendance will improve, resulting in more expertise among Members and ultimately in a better legislative product. Floor deliberation will become more meaningful than the mere reading of prepared statements that is all too common today. Scheduling reform will go a long way toward making Congress not only more deliberative, but more effective in that deliberation.

Thank you once again for the opportunity to testify today, Mr. Chairman, and I appreciate this opportunity to share these views, and I hope they will be seriously considered by the committee.

Senator DOMENICI (presiding). Thank you very much. Excellent testimony, Representative Emerson. It is good to have you on the committee. We look forward to working with you during the next three or four months.

Mr. EMERSON. Thank you.

Senator DOMENICI. I am told that the order of arrival is Reid. Senator Reid, you are next, if you would like to inquire.

Senator REID. I have no questions of my friend.

Senator DOMENICI. Well, I guess you are next, Mr. Vice Chairman.

Mr. DREIER. Well, Mr. Lugar, Senator Lugar was here before I was. Dick Lugar. Have you met him?

Senator LUGAR. Thank you very much, Mr. Chairman.

Bill, I think the points you made in your summary are important, at least as action steps, that there may be some consensus for in this committee, namely the limit of committee assignments.

I have no idea how the committee will finally come down on that, but there does appear to be a lot of support for that idea as a practical measure that would lead to at least serious consideration of a second point you made, no proxy voting. Without limit of numbers of assignments, clearly Members could not be in all places at all times, and the only hope of having meaningful committee debate and people around the table listening to each other would be the limit of the assignments to begin with.

I am intrigued by the testimony today and by your support of the publishing of committee votes. Clearly one incentive for Members to be on the Floor to vote in the House or the Senate is that these votes do become a matter of public record. Percentages are made of how many votes are cast and whether they were liberal, conservative, or supported by the President or what have you.

Really, the committee votes are critical in both Houses in a similar way, and if Members were around the table to begin with the legislation, there for the votes, it is logical that those votes, well-informed, ought to be a matter of public record. I think those reforms by themselves would be very meaningful.

I have a problem in the overall preface for your conclusions insofar as it is printed to me that a lot of the work that we do is driven by events outside of our structure. For instance, presidential elections that bring to the fore President Clinton or President Reagan, after large changes, and presidential programs in which the country really is deeply interested in the congressional management or sponsor passage of large issues that were a part of that, or congressional elections in which there may be a turnover of a number of seats. The people in their own way are sending messages, and it may not fit our schedules at that point.

It seems to me again and again we really have to be guided by the current events of our own elections, and also by foreign affairs that almost never fit our schedules, but require a response. In this respect, it seems to me there is always going to be tension in terms of that which is immediate and crucial or is perceived by the public or the President or someone else, in addition to those things that we might do in our own homework.

Do you have any thought about that?

Mr. EMERSON. I don't propose my solution as being exclusive in any way. It is something that I really want us to discuss. I understand very well the point that you make and all the forces that do come to bear upon us. But I think at the same time that we just do an absolutely miserable job of the kind of scheduling that we do have. It could be vastly improved upon, and still I think accommodate the pressures that you are talking about.

I mean, I don't know how you operate in the Senate, but in the House, we meet roughly 3 days a week, several hours on those 3 days, and very often, because of the point Senator Byrd made when he testified here, he knows that you know, the committees meet on the days that there is going to be action on the Floor of the House, because those are the days that Members tend to be here, absolutely to the disregard of the committee work. You know, if the House isn't in session, Members aren't going to attend committees, and I think that is wrong and it should not be that way.

I don't think we are as deliberative as we ought to be. I think there should be some way to make it as important for Members to attend committee meetings as it is for Members to attend the votes on the Floor of the House. I don't think we—you know, there is this scheme now to have Oxford style debates in the House. I think that would be wonderful. But you know, it is going to further complicate the schedule unless we find some way to restructure the schedule. I don't think Members—you know, why would they attend Oxford style debates when they don't attend the debates that occur on the House Floor now.

I am not saying this in any mean-spirited criticism of my colleagues at all. It is a fact of the schedule. I don't say that Members who aren't on the Floor participating are lazy; they are off in a committee meeting somewhere doing other things, you know, and then bells ring and they lose their focus on the committee and go focus on what's occurring on the Floor. It can be much more order to it is my point.

Senator LUGAR. I understand that. I think the specific suggestion of recorded votes is one way of having an incentive. I suppose as a practical matter, so long as there are unlimited debates in the Senate, the majority is going to want to have the option of starting early and closing late, simply because to be constricted otherwise is to give his opponents really more options to either delay or—and since I am an advocate of unlimited debate, I understand that—that part of the game will have to be to leave things much as they are.

But I think the idea of concentrating in the committee business by having fewer assignments, demanding that you vote in person, and therefore, bringing about debate, whether it is Oxford style or any other kind, there may be genuine debate in the committee of high quality, a specialization in the subject matter.

Thank you very much.

Mr. EMERSON. Thank you.

Senator DOMENICI. You are next, Mr. Vice Chairman.

Mr. DREIER. Why don't we go to Ms. Dunn.

Senator DOMENICI. All right. Ms. Dunn?

Ms. DUNN. Thank you very much, Mr. Chairman.

Mr. Emerson, you have mentioned three things that are very intriguing to me. One is proxy voting, eliminating proxy voting, and one is working 5-day work weeks, and a third is creating some sort of master schedule. I think all of those things would really give us a lot of impetus to help us keep the deliberative process, but let us use our time more effectively, and therefore have the chance to pass better public policy.

Working a 5-day workweek. How would we put that into operation? What would you see as the combination that would allow us to stay here, focus on our duties that we have here, spread the schedule over so that we are not frantic all the time and yet still pay attention to our constituent needs back in our district?

Mr. EMERSON. Well, you know, I have a theory that if we operated and scheduled in such a way to meet certain deadlines that we know are going to come about, that Congress would not need to be a year-round institution.

I am not opposed to it being a year-round institution. One of my recommendations here was that we should do maybe six months of legislating and six months of oversight, or one year of legislating and one year of oversight. I do believe that close contact with the people is very important, and maybe with a 5-day workweek, that is not allowing enough time for travel, but then maybe we go to the 3 weeks on, one week off routine that the Senate has engaged in.

But I would maintain that Congress could be six or seven month a year institution and we could return more to the concept of legislature that we sort of have gotten away from, but which the people seem to wish for once again.

Ms. DUNN. That is an interesting thought. It is a coincidence that I have been doing interviewing of former Members and people who have been around this place for a while, to get their thoughts and what reforms would be effective. And I met yesterday with former Secretary of Defense Dick Cheney, and he brought up that very topic, that we could operate our Congress in the way that citizen legislatures do.

I happen to favor the one week in the district and 3 weeks back, because it allows us to focus on issues that are sometimes quite different back in our districts.

Mr. EMERSON. Absolutely, and I think your point, I think your point about allowing time to be with our constituencies is indeed very important. So all of the recommendations that I have made here today are not intended in any way to be exclusive.

I do think that the points raised are important and that we should deliberate on them and make recommendations about them. So I don't mean that what I have said here is necessarily the answer, but I am glad that I have evoked the commentary that you and Senator Lugar have responded with.

Ms. DUNN. Let me ask you a question on proxy voting. How do you see that working? It can be the impetus, the pressure point change that, were we to enact this, if there were no proxy voting, folks would serve on fewer committees.

How do you see this working with the other side of the argument that if we limit the numbers of committees by statute, I guess it would be, rather than rule—

Mr. EMERSON. It would probably be by Rules of the House.

Ms. DUNN. Yes. How would you see those things affecting each other? Would they both be necessary to have the process work, or how would you come at the problem of too many committees, not enough focus, from one end or the other end?

Mr. EMERSON. Well, I think it would require—it would be changes in the Rules of the House that would ban proxy voting, and through the Rules of the House, you would limit the numbers of committees on which—and subcommittees on which Members could serve.

Then I think by using technology, which I mentioned in my prepared statement, we could devise—someone said you couldn't devise a master schedule for Congress. Well, you know, universities with tens of thousands of students somehow manage to match up professors and students, and there aren't conflicts. Surely we can match up committee chairmen and Members and avoid conflicts in schedule, avoiding conflicts in schedule.

Ms. DUNN. What do you think—Mr. Chairman, I am surprised by the amount of time I have. Are you sure you want to do this? We are used to about three-minute limits.

Let me ask you one more question since I still see the green light. What do you think of the idea that we have heard a few times before about having A committees, B committees, C committees, having Members belong to one or the other and not having those committees meeting at the same time?

Mr. EMERSON. I think that is an idea worthy of being pursued. I do. I mean, I think an object, one of our objects should be the simplification of the committee process in order that the schedule itself may be simplified.

Ms. DUNN. Thank you very much. Thank you, Mr. Chairman.

Mr. EMERSON. I think that in the process, we are going to have to use technology to get there. I don't think we are—somebody is going to sit back and plan a schedule; I think we are going to have to use computers to handle it.

Senator DOMENICI. Mr. Allard?

Mr. ALLARD. Thank you, Mr. Chairman. I am sorry that I was late and missed your testimony, Mr. Emerson, but I was reading over your written remarks for the record. I notice that you talked a little bit about the Oxford style of debate.

I was curious to know whether you personally support the Oxford style of debates?

Mr. EMERSON. Well, I think they are fine. I believe in—I think they can be very elucidating in terms of the public—helping the public to make up their mind. But the point I raised is rather than having Oxford style debates, if no more people are going to attend them than attend the current debates of the House of Representatives.

Mr. ALLARD. How would you vision—the thing that comes to my attention would be how would you visualize setting up the Oxford style debates and how they would mesh with committee schedules and Floor debate and all that?

Mr. EMERSON. If we move to the conclusion that it is a good idea to have them, I would then put them in the framework of the master schedule for committees and Floor deliberations that I have

recommended here today. You would fit them into the master schedule.

Mr. ALLARD. Thank you, Mr. Chairman. Thank you.

Senator DOMENICI. I had a few thoughts about the Oxford type debates, but I choose, since what I am thinking about might be taken as being political, I won't make them. Just to suggest that the House might consider opening the rule, that will get you all the debate you want.

Mr. DREIER. Great idea.

Senator DOMENICI. You don't have to rig it with Oxford.

We are going to try to hurry, because we have a vote at 3:00, and that means Senator Exon has to go, and so do Dick and I. But let me ask if our vice chairman from the House side has any questions, and I just want to give you some observations.

Mr. DREIER. Let me just ask one quick question, and this goes beyond our Floor procedure deliberations here, Bill. Have you obviously been very sensitive to this issue of reductions of staff, because of the fact that your special Hunger, Select Committee on Hunger was eliminated.

What are your thoughts as to how we as a committee will be able to deal, or should we deal with a major reduction in the staffing here in the Congress with over 38,000 employees here?

Mr. EMERSON. I don't think the problem—I think we have two separate problems. I don't believe that the staffs of individual Members are excessive. I have 567,000 constituents, and a staff of 16, both in the district, here in Washington to help me deal with legislative problems and problems in my role as an ombudsman.

Mr. DREIER. That is substantially less than you are allowed.

Mr. EMERSON. Well, you are allowed 18.

Mr. DREIER. But 22, including full and part-time.

Mr. EMERSON. Well, all right. I don't even think 20 or 22 would be excessive, given the number of people that we represent. I think the problem with excessive staff is on the committee side of things, and there, it is hit or miss. I think some committees are very well structured, and where certain professional staff are shared and you have certain partisan staff for the majority and certain partisan staff for the minority.

But there are other committees in which there is just a total imbalance where committee chairmen are arbitrary in the allocation of resources, and the minority is very ill-served. I would hope that we would try to structure things in such a way that there was a reasonable allocation to the minority of staff that they would need, but wherein most of the staff of committees were indeed professional technical staff.

Mr. DREIER. You do support the idea of a reduction in staff?

Mr. EMERSON. Absolutely. Absolutely.

Mr. DREIER. Is there a percentage figure?

Mr. EMERSON. I don't have a particular percentage figure in mind, I just think that the committee staffs need a very thorough review. Some, I might say, some are very—I don't want to point out any that I think are particularly ill-structured at this juncture. I think some committees are very well structured and do not have excessive staff, and other committees are terribly structured and do have excessive staff.

Mr. DREIER. What about all these other organizations such as those that have testified before us here, the CRS and the Congressional Budget Office.

Mr. EMERSON. Oh, I am a strong supporter of Congressional Research Service. It is entirely feasible in my mind that we could give them additional authority and they could do a lot of the work that we now currently assign to our staffs. They are absolutely outstanding. I use them a lot.

Mr. DREIER. You mean, get our personal staff to compensate for that because we have personal staff working on those issues?

Mr. EMERSON. I think the volume of work on our personal staff really has to do with coping with the mail and phone calls and casework as we refer to it.

Mr. DREIER. You answer your mail and phone calls?

Mr. EMERSON. I am a real stickler about that.

Mr. DREIER. Thank you for your help and testimony.

Thank you, Mr. Chairman.

Senator DOMENICI. Senator Lott, did you have any questions of this witness?

Senator LOTT. No, Mr. Chairman, I am sorry, I missed what he had to say. I look forward to some real reform later on this year. Thank you.

Senator DOMENICI. Bill, let me just suggest that you raised some very interesting questions. I have not given up at all on the proposition that we could best reform by breaking a 2-year Congress into two parts. One year for budget, appropriations, taxation, if any, and the second year oversight and authorizing.

I came to the conclusion, as I listened to you speak, that one of the big problems in the Senate is that if you are not in session and on the Floor, there is a high expectation on the part of leadership that you are not going to be around. In fact, it does drive our schedule almost totally.

You get to Thursday night and you might get finished bills much quicker because you know, people already have thought they were going to be home, working with their constituents Friday, Saturday, and Monday. I am sure the same exists in the House. You get through your votes quicker on the Floor, so I assume there is even more of that.

But I am wondering if we couldn't build into a 2-year cycle a part of a year that was for appropriations, budgeting and taxation, and during that time we could commit to our membership that we will finish by the time you have to have appropriations, which would be September 1, and we could get totally built into our system that we are out from that time until the next year.

Thus, people could begin to tell their constituents they will be home for 2½ or 3 months in their districts, and do the same in the second year so that you wouldn't really have this idea of being up here for 3 months and going home and being totally a citizen legislature, but you could encapsulate your schedule where there were 2 or 3 months in each of those years when you were not supposed to be here.

My own opinion is that this would be an exciting thing, we need 2-year appropriations to do that, but I think we could, and we need a broader-based appropriations in Finance and Ways and Means

Committee, so more people are on it, because they will be the only ones doing work in that one year, and I am thinking about how to do that and will present it to this group.

But the lingering concern is, how will you keep Members here when the only goal is to do authorizing in committees and oversight. Desperately needed. Appropriators say, so you will know, we can't do a 2-year appropriations because we are doing so much oversight and we need to do oversight every year.

I am on that committee, and it is no aspersion to the Members, the wonderful subcommittees, but frankly it in some cases is the only oversight and it is perilously close to none.

Mr. EMERSON. I agree.

Senator DOMENICI. And as a consequence, there is little or none. Our oversight is based on crisis. You know, when somebody out there in the hinterland reports that some Federal bureaucracy is doing X, Y, Z, if it gets big enough to a Member or enough notoriety, we do oversight, or if literally we get a reconciliation bill or something just forced down our throats by process.

Could you address—what would you think about the approach I had and what would your ideas be about getting Members to be here?

Mr. EMERSON. Well, I definitely think that we need a time for legislating and appropriating and time for oversight. It could perhaps all be programmed, laid out, and so we would be giving appropriate attention to each function, but we do not do that now.

I share very strongly your concern about proactive oversight. As I said in my opening remarks, I don't have any pride of authorship here that we should be a half-year doing legislating and appropriating and the other half doing authorizing, or oversight, but I do think that we should very seriously address this subject. And if we do that, a lot of the other problems about the Congress will straighten themselves out.

Now, as to the time allowed for back home, once again, no pride of authorship, but I think it is very healthy for elected Members of Congress to spend as much time as they can with their constituencies. At the same time, I think our constituencies would understand if they had a real sense that we were honest to God working up here, they would understand that Washington is where Congress meets and forgive us when we were here instead of back with the constituency.

I think part of the problem is the perception that we give of not being very serious about our daily or weekly deliberations here. I don't know what the magic time frame is, but I believe that this wonderful committee on which we both serve can certainly formulate some worthwhile recommendations in that regard. I don't presume to dictate it; I encourage the active discussion by all Members of the committee, but with an idea toward coming down with some real set recommendations.

Why couldn't we have mandatory attendance? You know, I suggested the idea of record votes in committees as well as on the Floor of the House, because when you are going to be on record for votes, that tends to encourage attendance. But why couldn't we all—I think, as a matter of fact, I think there is a law on the books

that your pay gets docked if you are not in Washington when Congress is in session, and it has just never been enforced.

You know, congressional buffs have told me there is such a law on the books. Maybe if we started docking pay for days in which Congress was in session and Members weren't in Washington, it might get the attention of absent Members.

Senator DOMENICI. Well, Bill, thank you so much. We are going to call on Senator Exon now.

Mr. EMERSON. Thank you. Thank you all.

Senator DOMENICI. Jim, would you like to grace us with your testimony. While you are leaving, Bill, and the Senator is taking his seat, let me just tell you, if you wonder whether we have thought about using computers and communications to schedule ourselves more properly so we minimize duplication, the second, second reform committee removed, not the last one, but the one before that, I happened to be on both of them.

But we put in a whole schedule, a whole section asking the Chairman to use computers and a central computer section so that before they call a meeting, they could at least inquire how many of their Members are already committed to something. It has never been used, but it has been thought of and it is all out there in that report which might intrigue you.

Mr. EMERSON. Thank you.

Senator DOMENICI. Senator Exon, you are going to be next here and we are going to give you as much time as you want. I want to say for those who are not here and listening, Senator Exon served as Governor of Nebraska before he came to the U.S. Senate in 1979. His current committee assignments include Armed Services; Budget; Commerce, Science and Transportation, and we are very pleased to have you join us here today, Senator.

STATEMENT OF HON. JIM EXON, A U.S. SENATOR FROM THE STATE OF NEBRASKA

Senator EXON. Mr. Chairman, thank you very much. I appreciate your courtesy in inviting me over to give you a few thoughts. I am going to be concentrating probably on one matter today, because I think you have had an awful lot of advice on the whole scope of matters.

In listening to the testimony, I heard you say something to the effect that you think there is very little oversight in the Appropriations Committee. That is true. Of course, that is the way it is supposed to be. For those of us that do not serve on the Appropriations Committee, but serve on authorizing committees, I assure you, and I am sure that you know, having served on other committees, certainly in the Armed Services Committee and on the Commerce Committee, we spend untold hours on oversight of the various far-flung enterprises of the Federal Government, of which we have some responsibilities in that area. So I think there is some oversight going on; probably, given the record, there should be more.

I spent quite a bit of time last night in answering the form that you and Senator Boren and I suppose some of our colleagues in the House sent to all Members of the House and Senate regarding do's

and don'ts and questions and rankings of various changes that we had.

I thought it was an exceptionally good questionnaire and I found some of the questions a little bit difficult to answer, which means that I think some thought went into the proposition of it. But it will be back in your good hands now, for what one Senator has to say.

Let me applaud you and your colleagues on both sides of the Hill who are taking an undertaking, a most necessary one, but a very time consuming task. You have a huge task to perform, but a very necessary one, and I hope that something revolutionary, to use a word advisedly, comes out of this. I pledge to work with you to make our Congress a better institution, and maybe help to restore some public trust in our institutions that I think we are all proud to be Members of.

Certainly I would contain my recommendations with regard to the Senate and the changes being made there. I certainly am no expert and don't claim to be well informed on what should or should not be done over on the House side, but I suspect that some of the problems that plague us also plague those in the House of Representatives.

Regardless of who sits in the White House and which political party controls the Congress, the House and the Senate over the years have often become forums for inaction, or slow action when the people are simply demanding the opposite.

By nature, legislative bodies are deliberative institutions. I do not believe that we should change that significantly because we have a very important check and balance function with respect to the executive branch. However, deliberations is one thing, and gridlock is quite another. The ability of the minority, sometimes even the majority, of even one to derail the will of the majority has become to commonplace. I believe it is time for reason and compromise to reign supreme, hopefully, once again, in the United States Senate.

For the record, I concur with the seven Senate Rules changes proposed by the Majority Leader just recently. These include limiting debate on motions to proceed, requiring a three-fifths vote to overturn rulings of the Chair, allowing the committee reported amendments to be considered germane, counting time consumed by quorum calls against the Senator who suggested the quorum call, allowing a Senator to go to conference with the House after adoption of one motion rather than three separate ones, dispensing with the reading of the conference report and finally, providing for a motion requiring that amendments be relevant if three-fifths of the voting Senators agree.

These seven proposals are reasonable and in my opinion protect the rights of the minority, while moving the people's business forward. Additionally, I would like to propose one other change for your consideration, which I believe would accomplish or help accomplish the same goals, and this is my main point of appearing here today.

Currently, as you know, it takes only one Senator to place a hold on a bill, and I don't know whether this is true in this House or not; I suspect not, I hope not. In my view, this tool has been used

far too often by Democrats and Republicans alike, to impede the work of the Senate.

In order to help the Senate conduct its business in a more efficient manner, I propose that it take 16 Senators to place a hold on a bill, rather than just one. Just last week, the Senate Majority Leader addressed the issue. He reiterated that although Senate rules do not make any provision for holds, both Democratic and Republican leaders have developed informal systems by which Senators notify their leaders of the problem with bills or nominations.

There is currently uniform policy regarding notification of Senators, upon request, when Floor consideration of a bill or nomination is being scheduled.

However, I believe this informal notification system has been abused. Even though there is no specific Senate rule protecting the right of the Senator to place holds on measures or appointments, we may need a new Senate rule to stop the abuses which have taken place and seem to be occurring more frequently.

Now it takes 16 Senators to sign a cloture petition before it can be filed. I believe that it should also take the same number of Senators to place a hold on a bill, which is another form that I call reverse cloture. Certainly after reasonable amount of time has elapsed to allow Senators adequate time to have their questions answered or participate in genuine consultations of the substance, then we should move.

Mr. Chairman, the Senate time and time again has been tied into knots with the whole procedure, especially near the end of a session by the current ability of one Senator to stop a bill from proceeding by unanimous consent through the threat of an extended debate. I had a—this is a true story that happened I think 2 years ago.

I had a bill on the Floor; it had been cleared by both sides under the usual procedure that we go through, but it did not come up for debate because there began a whole series of rolling holds, and of course they were secret. Well, then I would try and find out who it was that put the hold on. One day it was so and so, I found out the next day it was another Senator.

In this particular case, there was a hold on the bill by a Democratic Senator, not a Republican Senator, who had been placing most of the holds. I went to the Democratic Senator and I said, "Why do you have a hold on my bill?" And he said, "What bill is that?" I thought he would know about it since he had a hold on it.

I said, "Well, it is such and such a bill." He said, "Well I don't have any problem with that bill."

"Well," I said, "why do you have a hold on it?" He said, "Is so and so a cosponsor of your bill?"

I said, "I don't know." I looked, yes, he is. "Well, I am putting a hold on the bill because he put a hold on one of my bills, and I am putting holds on every bill that so and so is a sponsor or a cosponsor of."

I have also run into the situation time and time again, as I am sure you have, where staffs put holds on bills. And sometimes Senators don't even know about it, and in many cases, I have been able to correct that. I have instructed my staff if any of them ever put a hold on a bill, then they won't be members of my staff any

longer if I find out about it. It is too much of that deal where a staff member decides they are going to play Senator, and I think that is not wise.

In closing, just let me say that I think that we have seen a proliferation of holds, counter-holds, retaliatory holds and so-called rolling holds. I say that enough is enough. If the leadership is willing to move ahead with legislation, then one single Senator should not be able to stand in the way indefinitely.

Sometimes the motivation for the holds has nothing to do with the substance of the bill being held. It is important to remember that even if my proposal would be accepted by you, other existing methods will still be available to stop legislation or a nomination from proceeding.

Nevertheless, if we can take this one small step among others that I hope you will be recommending, we will be helping to bring some order out of chaos. Again, I believe the rights of the minority will be fully protected.

Mr. Chairman, I appreciate being asked to testify before your committee today and look forward to your recommendations and stand ready to assist you whenever I can. Once again, I salute each and every one of you for the time and effort you have put into what I think is a very, very important matter for the Congress of the United States.

[The prepared statement of Senator Exon is printed in the Appendix.]

Senator DOMENICI. Thank you very much, Senator. On our side, the Senate side, would you be sure to advise us when the vote is up? Maybe they are putting it off a while.

We are going to proceed now as we did before on time of arrival for questions. Bill Emerson, you are first.

Mr. EMERSON. No questions.

Senator DOMENICI. Senator Reid is not here, Senator Lugar.

Senator LUGAR. Jim, thank you for your testimony. I just want to inquire as a practical matter on the hold business. Is it not the fact that the Leader, the Majority Leader, can come forward with a bill whether there is a hold on it or not. Essentially you are right, that the formal arrangements have been there between majority and minority leaders and the parties switch, and therefore, there has been reciprocity there.

But perhaps the reform that is required is determination by the Leader to proceed, recognizing that, at least as I understand it, the point of the hold was simply to notify a Member that a bill in which his State has an interest is going to be on the Floor so that he might prepare to do battle and to be on the Floor to talk about it, and nothing more than that.

It seems to me maybe this committee could try to clarify that issue, but at the same time, legislation may not be required. In fact, it might not be effective if in fact all of this has been an informal business between the leadership.

Senator EXON. I would answer your question this way, Senator Lugar. You are right, that the Majority Leader can bring these bills up, but in so many cases, he brings them up, there would be objection and then we go through the vote procedure.

Maybe this is one of those things, and I hope that you don't feel that everything that you recommend to the House and the Senate to help out our procedure isn't something that we have to pass a law on. I do think that there are lots of things, and I would tend to agree with your statement, that maybe this is something that could be corrected by having it spelled out by the Majority Leader and the Minority Leader.

I don't know whether you have such a thing as holds on the House side or not. But it seems to me that—as you know full well, the holds were well intended. I think it is true that if something that is coming up that is going to effect Nebraska, I don't want Dick Lugar and Jay Rockefeller to go over there some day when I am over in the Armed Services Committee to do something to Nebraska, that I would think maybe—that is a legitimate hold.

What I am trying to emphasize is that I think there are more illegitimate holds than there are legitimate holds and that is what I would like to see corrected.

Senator LUGAR. I support that. Let me just offer a practical example of the type of thing that comes into play between the legislative and executive branches on this. The other day, two Republican Senators on the Senate Agriculture Committee asked me, as Ranking Member, to make certain that I put a hold on all agricultural nominees from President Clinton until the Secretary of Agriculture or his designee answered a question that they had about potatoes in one State. This was a bipartisan request, in fact. And on another occasion, a particular operation in a State that they felt was very dubious, and for a variety of reasons, the Secretary had not chosen to talk to these Senators.

One I suppose could make the case that after all, the administration is one place and the Senate is the next, and we ought to know what we are doing, but in behalf of their constituencies, these Senators felt strongly about that, and I honored their request. Now, as a matter of fact, the Secretary then very promptly saw all of the Senators that were involved, two from the two states times two and they moved on with their business.

Senator EXON. I know full well the incident you are taking about. Although I was not one of the Senators, I knew about it. In that particular case, the Senators got what they wanted, didn't they?

Senator LUGAR. Yes.

Senator EXON. An audience with the Secretary of Agriculture.

Senator LUGAR. Yes.

Senator EXON. Well, in the first place, it should not be that difficult to see the Secretary of Agriculture, number one, and if I remember this particular incident, I don't think the hold on more nominees for an important position in the Department were held too long. The problem that you and I have seen with holds is that they go on for weeks and months and months, and it stops action.

Senator LUGAR. I agree, and I hope maybe our committee can offer guidelines and not need legislation.

Thank you.

Senator DOMENICI. We now have a vote up. We can take about another five minutes, so let's use it kind of judiciously. We are not

going to ask you to come back unless it is imperative that somebody needs Senator Exon.

Anybody on your side, on the House side want to inquire?

Senator EXON. Do you have holds on the House side?

Mr. WALKER. I was just thinking, Mr. Chairman, it is probably something we want to think about.

Senator EXON. I withdraw my testimony and ask unanimous consent that it be stricken from the record.

Senator LOTT. Mr. Chairman, as a Member that did serve 16 years in the House and now in the Senate, frankly, it is the thing that I like best about the difference between the House and the Senate.

I think that the holds serve a very positive purpose, but I do think you are right, that it is abused, and one of the solutions that I think we should consider is a point that you and others have made.

So much that is done is done by our staffs, quite often without our knowledge, without our approval. A very simple solution would be to require that a hold be executed by the Senator himself and not by a staff member.

Senator EXON. In writing.

Senator LOTT. Well, in writing or in person.

Senator DOMENICI. And disposed, how about it?

Senator EXON. Mr. Chairman, I think you made a good point. I don't believe that secret holds are in order. If I have a hold on Senator Lott's bill, then I think we should know what the problem is and maybe he can come to me and we can get it straightened out. But if he doesn't know who is doing it, and it even becomes a more devious situation when you do keep it secret.

Senator LOTT. We could probably work it out, and I agree that it probably should just be done by suggestions or guidelines, rather than trying to put it in fact in the rules or in the law, if you will. Also, I want to commend the Senator on his selection on committees. Very good committees you have.

Senator DOMENICI. Let me make for the record an observation about this. Frankly, I think of all of the procedural changes that have been recommended, there is one that is gaining momentum, and that is to eliminate the Rule XXII debate on motions to proceed, motion to bring up the bill you are complaining about having a hold on, or bringing up a nominee in Executive Session.

If we abolish that, we have gone a long way to diffusing the validity of holds, because a hold is predicated on the fact that you can't get it up without a filibuster, and if you take that away from the inception and then establish some kind of guidelines, I think that we will be moving in the right direction.

Let me tell you how far the procedure of holds has gone, Senator Pryor. If we think it is only the Senate that exercises holds, I had a situation where a Cabinet Member put a hold, came over to Congress and asked two Members of the Senate to put a hold on a bill we had worked on and was ready to pass.

It turns out I started inquiring, now, where is the hold coming from? And they said Senator so and so and I went to see him, and they said, well, the Secretary of so and so asked me to do that. I

called up, and it turned out that that Cabinet Member hadn't really done it, but one of the Cabinet Member's staffs had done it.

Needless to say—

Senator PRYOR. This wasn't in this administration, was it?

Senator DOMENICI. You got it.

Senator PRYOR. We are getting blamed enough.

Senator EXON. Everything else is wrong with this administration, but not that.

Senator DOMENICI. It was not. It was somebody in the Bush administration. But actually, it was a very serious problem for that Cabinet Member, because, you know, that person had to claim in-cense on the basis that they didn't do it, but that put them in a worse muddle, because I mean you have staffs running wild up here in your name going to see Senators asking them on serious matters like this.

So I think the sooner we can get this issue behind us and make it more practical, more understandable, less arbitrary in terms of exercising it, it is going to do a lot to help the Senate.

Senator EXON. It is a small step in the right direction, but I think an important one.

Senator DOMENICI. On the other hand, you know when we were talking about this last time, I made the statement there is nothing about holds that a Majority Leader can't solve. And it turned out that I said to all these candidates, if the Majority Leader will just get with it, they will get disposed of. He didn't hear me, but he did just that. He just started saying holds or no holds. All of a sudden the holds disappeared.

So part of it is giving too much precedence to what we have been doing for oh, so long. Now, we are going to go, but Senator Pryor, you are next, will you testify now?

Senator PRYOR. I will be glad to.

Senator EXON. Am I excused, Mr. Chairman.

Senator DOMENICI. You are excused, Senator.

Mr. DREIER. Senator Pryor is going to inform the House as to exactly what we should be doing here, our next witness testifying before this committee earlier this month, and he is an extraordinarily distinguished Member of this Joint Committee.

Mr. Pryor was first elected to the House of Representatives in 1966, served as Governor of Arkansas from 1975 to 1979, and came to the United States Senate in 1979. He currently serves as Chairman of the Special Aging Committee, and is a Member of the Agriculture and Nutrition, Forestry, Government Affairs and Finance Committees, and I won't list all of his subcommittees at this point.

We look forward to hearing your testimony, Senator Pryor.

STATEMENT OF HON. DAVID PRYOR, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator PRYOR. Thank you, Congressman. I appreciate this. Once again, I appreciate having the opportunity to testify before this very distinguished group.

Mr. DREIER. It became more distinguished just a few minutes ago.

Senator PRYOR. Maybe some of my colleagues from the Senate will come back in a minute and listen, because they will remember some of these things that Senator Danforth and I attempted to do in the Senate to some of the rules and the procedures and the customs, starting really about 1986, I believe, that we started this. Really we started this movement out of a pure sense of frustration.

I know that many times that Members of the other body and your body, the House, I know that you have become very frustrated with the customs and practices of the Senate. We know that, we are sensitive to this. I can assure you that many Members of the Senate are very, very exasperated from time to time.

Mr. DREIER. Some of us get frustrated with the practices of the House, too.

Senator PRYOR. You all move too fast over there and we move too slow over there. Maybe that would be a proper accusation.

Back in the 100th Congress, actually, in the 101st Congress, Senator Danforth and I, after meeting with many of our colleagues, after having a meeting of the United States Senate, first time I guess that I had been to one in closed doors, and we talked about who we were and what we were and what a great institution this was, but yet how inefficiently we organized our time.

We felt some momentum at that moment to move forward with some suggestions for rules changes and Senator Danforth and I, over a period of several months, talking to almost every Member, Republican and Democrat Members of the Senate, ultimately introduced four proposals.

We were referred to, as I have said before, as the Quality of Life Committee. I am sorry we got tagged with that name. I like to call it the Quality of Work Committee, working better for our constituents so the Senate could serve our constituency and our country better.

My concern about the Senate was the procedure in scheduling that we simply do not spend our time wisely. Let me say, if I might, that since that time, we have done a few things to help. We still have a long way to go, but we made some real starts. I will talk about those in a moment.

Let me first discuss the concerns that we had in these sessions of Congress back there, which ultimately brought about four Senate resolutions dedicated to the way the Senate allocates its time.

The first resolution dealt with the sense of the Senate resolutions. A skyrocketing number of sense of the Senate resolutions were beginning to be proposed about that time and they were going out off the top of the charts. Literally, a Member of the Senate on any given day, on any debated issue, could walk down to the Clerk and on the back of a piece of paper or a match cover, literally, could throw down on the Clerk's desk a Sense of the Senate Resolution. It had to be read; it was debatable, it was filibusterable, one Senator could do it, ours was very simple what we were doing to correct it.

We said that no sense of the Senate will be considered, nor considered to be at the desk until 20 Members of the Senate, one-fifth of the Senate, had signed the Sense of the Senate Resolution.

We thought that was a representation of common sense. Rationale behind the proposal was that the Senate was spending far too

much time debating the merits of the Sense of the Senate Resolutions that had no legal effect.

Now, I realize that the importance of putting the Senate on record regarding important issues of the day, I know that. But I still cannot believe that this proposal, had it been adopted, would have done nothing except limit the number, and I must say, improve the quality of the Sense of the Senate Resolutions that still consumes an enormous amount of the Senate time.

The Senate Judiciary Committee now requires even, for example, that any commemorative resolution, national cookie month or national pork month or what have you, that those resolutions have 50 cosponsors before they are reported out of the committee, and I applaud that move. Once again, I think this is a step forward.

The Sense of the Senate Resolutions usually take the form of a commemorative, but not every time. Many times they are matters of policy; many times, and especially, it seems like, on State Department authorizations, the Senate at that time becomes a mini State Department, and all of us who have any problem with any country in the world or any concern that we have read about it, it seems like the Sense of the Senate Resolution seems to be our approach to making a statement. Once again, they are filibusterable, and they take an enormous amount of time.

I am still of the mind that debates over these amendments take too much of our time, and I wish that we could adopt something that would limit the number, and I will continue working for the rule change of Senator Danforth and myself.

By the way, we were talking a moment ago, Senator Exon of Nebraska, about holds. To the best of my knowledge, and maybe he covered this, there is nothing in the rules about holds in the Senate. It is a custom, and it is a custom that has been abused, and I support any way that we can to eliminate holds or certainly to lessen their effect, because I don't think they are fair in most instances.

The next issue that Senator Danforth and I addressed was the Motion to Proceed. I heard this mentioned toward the end of Senator Exon's proposal. The Motion to Proceed is an amazing parliamentary hurdle that has become, in my opinion, one of the major hurdles of doing business in the Senate.

I have, for example, I think I can state about what this chart says, because we see a trend, a very dangerous trend starting out in 1977, 1978. I was elected in 1978; we had 25 cloture motions filed that year. You can see the numbers have gone up to a high of last year and the year before in that Congress, 62 cloture petitions were filed.

We also see that on those clotures, we had 48 votes in that same period. We are up at an all-time high on votes on cloture to cut off debate. And on the Motion to Proceed, last, the last session of Congress, just on the Motion to Proceed, just to get to the bill itself or to the amendment, we had 35 votes just on the Motion to Proceed.

This is an enormous waste of time for the Senate, and I think it is a waste of our resources, and we are very hopeful that something is going to happen. I am very proud that Senator Mitchell recently has spoken out on this issue. In fact, he may have come before this

committee and made mention of what he might propose to do something on the Motion to Proceed.

We also see another chart that tells us starting with the 90th Congress and on through the 102d Congress, how many votes we were having each year, and also, how many hours we were in session. I shouldn't say Congress, but I think—I don't know whether that covers the House and the Senate, or just the Senate. But we can see that we have fluctuated pretty dramatically in the number of votes. We see that the voting pattern has been going down, but the number of hours we have spent in session has been going up.

Some might surmise that we are talking more and acting less, or we are talking more and voting fewer times. I don't know really how to interpret that particular chart, but I think every Member of the House and the Senate could look at that and surmise on their own.

But the alarming fact is that in the last session of Congress, and this is the alarming fact, that 10 percent of all of our votes in the United States Senate related to cloture, 10 percent, one out of 10 votes in the Senate related to cloture. And so I think that in itself says something, that this is an area I hope that we will have the wisdom to work with and certainly the wisdom to work around.

We have seen drastic increases in the number of cloture petitions, and I think that in no disrespect to the Minority Leader or anyone like that, or any minority party, but I think that there has to be, for the Majority Leader, I think the power to set the Senate schedule going—we are going to have to have more powers there, I believe, for the Majority Leader, and it seems reasonable, because I know that in most instances, the Majority Leader and the Minority Leader work very closely together on scheduling.

I don't see this to be a real problem, but I think there are certain privileged motions that should be considered that cannot be filibustered. And I think they may be rare, from time to time, but I am hoping that we certainly can study that.

The third resolution brought about by Senator Danforth and myself, it was really a housekeeping matter, it was the laxity regarding the time of roll call votes. At that time, our unwritten rule was we had 15 minutes to get to wherever we were from the committee or with constituents, wherever, to a vote on the Floor of the Senate. We got pretty lax about this.

In fact, many times someone would be coming in from the airport or would be at a reception and so the entire Senate would sit there for, not for 15 minutes, but 20 and 30 and 45 minutes, an hour, waiting for Senator Jones or what have you, or whoever to come back from wherever they were so we could conclude the vote. And there was a great tolerance.

One hundred Members of the Senate all tolerated each other's schedule, and sort of accommodated each other's schedule, to the extent, and I figured this up one time, that the amount of time over 15 minutes on 500 roll call votes a year that we were spending amounted to us staying in session about 2½ weeks longer than we would normally have to to accommodate just the overage of time that we were using there.

Senator Mitchell, in recent months, has instigated a 20-minute rule with only exceptions of the direst nature, and we have certain-

ly lessened our time, our roll calls are much more crisp, and all the Members of the Senate are on notice that those roll calls are going to be 20 minutes. We have done a lot to really, just to rectify this problem.

The last resolution was the most complex of the Pryor-Danforth resolutions. It would have required that amendments on the Senate Floor be offered in the order of the section of Senate of the title of the measure being amended. This is very similar to what you Members of the House of Representatives now employ.

As a former Member of the House, I must say that I don't think that we can adopt every rule of the House, nor should we adopt every rule of the House in the Senate. But this was at least the thrust of the proposal that we would amend by title, and that to revisit the title, to come back and try to get an amendment considered in a title that had already been passed by would either take unanimous consent or 60 votes, but it would be a very hard situation.

And after the time had passed for a section of the bill to be—that was read, it would be very difficult if the Member of the Senate had missed his opportunity or her opportunity to amend that section. And we wanted to make it difficult, because we want to move the Senate on faster.

One of the time consuming factors that we have been faced with over the years has been the fact that in the United States Senate, once again we accommodate each other's schedule to unmerciful proportions I think sometimes, but the additional thing we do is many times, and I know the Senator from New Mexico is aware of this, and he is usually prompt with his amendments, many times we sit there as a Senate, in the Senate as a body, waiting and waiting and waiting for an amendment to be brought over to be attached or to be debated.

Now, to me, this is one of the most exasperating things about service in the Senate, is waiting and waiting and waiting for those amendments to be brought over and offered to a measure.

I have always said I think just moving to third reading and final passage would cure some of this, but not all of it, but it is not a, I guess a very equitable thing to do to our colleagues to try to move the third reading and final passage, but I am very hopeful that we can in some way streamline that procedure and give a leverage or a reason for Members to come forward and offer their amendments.

Just a few general comments here in conclusion, and that would simply be that I think that we have got to really help to bring the Senate into the new century, and many times I feel like that some of the old rules and old ways of doing things are not going to work for us much longer, and I am just very hopeful that we will have the wisdom and the basic common sense and the sense of spirit, I guess you might say, to accommodate this great institution to make those—to make the Senate operate better and more efficiently.

Well, Mr. Chairman, I do thank you and I would be glad to answer any questions if you have any.

[The prepared statement of Senator Pryor is printed in the Appendix.]

Senator DOMENICI. Thank you very much, Senator Pryor.

Senator Lugar?

Senator LUGAR. Thank you, Mr. Chairman.

David, thank you for your presentation. I have no quarrel with you on your item on time for voting, and I think the Majority Leader's 20-minute rule is a good one. I suspect with regard to voting by section, that requires some more study, but it might in fact be a constructive rule and the committee ought to consider that carefully.

I want to visit with you a moment about the charts and about the cloture situation. Anticipating the argument you were going to make, because I would not want to give the impression that these figures come off the top of my head, I tried to research why there were 62 cases of cloture motions being filed in the last Congress, or for that matter, in the final 2 years of Ronald Reagan's administration, 1987 to 1988, 154. Those two sort of leap out.

And one of the problems I think for Republicans in those periods is that we lost the majority in the case of the 1987-1988 situation, and Democrats anticipated a big presidential campaign. That was true also of the 1991-1992 year situation.

And one thing that indicated that, and this is particularly true of the latter figure, the 62 which leaps out at you, is that on 34 instances, the Majority Leader filed a cloture petition on the Motion to Proceed, that is before there was a filibuster and before there was even a debate.

In other words, as Republicans, we thought perhaps the Majority Leader, anticipating he might have trouble, decided to go with cloture even before we even started and therefore truncated the normal processes of the Senate. But be that as it may, there were only 39 different issues. The 62 figure comes from multiple votes on the 39 issues. And of the 39, only eight were ever halted or in any way by filibuster.

In 31 instances, the bill passed and was disposed of, and in the case of the Majority Leader filing the 34 cloture petitions, even before the debate in 24 instances, accommodation was found between the two parties without filibuster.

So I make that point, because the chart would lead one to believe that we were involved in activity of either filibuster or cloture motions, as you say, almost 10 percent of the time, and in fact, it was much less than this, and those instances I think can somewhat be explained by the fact that both parties felt they had a pretty good case to bring to the country.

The Republicans did not have the numbers in either House, but we did have the potential for filibuster, which was recognized by our Democratic leadership. In the current instance, as we have already heard from Lloyd Cutler, the distinguished former counsel of the President in the Carter administration, he would be prepared to get rid of Rule XXII or the filibuster rule all together and simply say 51 is it. And I understand his impatience and so expressed it to him face to face when he was here.

There is exasperation on the part of the majority to get on with it and say the majority rules, the problem being that the unique characteristic of the Senate still is unlimited debate, and I think the founding fathers wanted it that way, most Americans do too,

and when the shoe is on the other foot, why we all want to use the rules.

And all I am suggesting is I don't think the rules are being abused. I am one who would like to see less movement toward filibuster on questions that are less than monumental for the Nation.

I think the number of times that people threaten filibuster has become excessive, and perhaps one of the guidelines that this committee might come forward with, as opposed to a change of the rules that I think would be very difficult to obtain. It would be in the same spirit that we are advising people to cut down on their committee assignments, to be there, maybe not have proxy voting, to have record votes in committees as well as on the Floor if we come to that.

We could also advise them to be more temperate in their thoughts about filibuster, or for Majority Leaders to be more temperate in filing cloture before the debate engines. In both ways, we might make headway.

Having heard all of that, what sort of response do you have?

Senator PRYOR. I appreciate that, my friend from Indiana. I also don't have these figures. I should have, they would be easy to obtain. I thought about it this morning and I forgot to bring them. With the number of clotures we already have had in 1993, I have a fear, I say to my friend from Indiana, that we may be headed toward a record-breaking year this year. I hope that is not the case.

But basically what I am trying to establish is the trend, the trend of having to invoke cloture on issues that where we are never really getting to the merit of the issues, and the Senate basically is sort of being denied the opportunity to really have a vote, up or down, on the merits of the issue.

The second reason is the inordinate amount of time, just pure time, that we are being caused to expend in the issue of trying to get to the issues, to vote for those issues, or against those issues. And I may be like Lloyd Cutler, I don't know whether I would just like to totally do away with the filibuster or Rule XXII, but I have come to the point where I am very close to it. I don't know that it serves as well.

I know the Senate, once again, is very different from the House, and I know it should be and must be, by its nature, but sometimes I really feel that the stalemating and the so-called gridlock is caused as much by the threat of a filibuster as it is by a filibuster itself.

And recently, and I don't want to get into partisan bickering here, but recently you know, I guess it was the other side accusing your side of filibustering by amendment on one of the measures recently before the Senate, and that, and again, is a new sort of a system, I guess, of slowing the Senate down, and once again, I guess, preventing us from reaching a vote on the merits of the proposal. And I am just really trying to establish the trend there that I hope we will not continue.

Senator LUGAR. I share that hope. I would say that Republicans went to school on the Metzenbaum-Abourezk filibuster of natural gas.

Senator PRYOR. That was in 1978, as I recall. I wasn't here then, but I still hear about that debate.

Senator LUGAR. Together by amendment and voting, not desirable, and it took the Majority Leader, Senator Byrd and Vice President Mondale to finally break the filibuster.

Thank you.

Senator PRYOR. Yes. I still hear about that.

Senator DOMENICI. Mr. Emerson, would you like to inquire?

Mr. EMERSON. No questions. I note that the Senator's questions dealt largely with issues of the Senate and I don't inject myself into that forum.

Senator PRYOR. Well, you know, sometimes from time to time those in the House desire to try, you know, and come over to the Senate. I came—I had a little short stop, I didn't quite make it, but I tried from the House to the Senate one time and was not successful, but I was a few years later and had a little detour, I might say, unavoidable.

But it is a very different body. It is a very different body, and the mode of operation is very different, and both I think in their respective ways, certainly, perform a very noble function.

Mr. EMERSON. Thank you.

Senator DOMENICI. Thank you very much, Bill.

Ms. Norton, do you have any questions or observations or whatever?

Ms. HOLMES NORTON. Thank you, Mr. Chairman.

First, I appreciate what this chart shows, and I note that 1991-1992, we have a crescendo there. Virtually, and in a real sense, part of the genesis of this committee comes from this notion of gridlock, and if gridlock ever reached a height, it was surely in that session.

I wonder, Senator Pryor, if you could enlighten me on this notion, I think my colleague, Senator Lugar just alluded to it, that the framers blessed the filibuster, that that is somehow part of our—that was a part of their thinking.

Now, I understand that the Senate was a way to give an equal voice to small, to small states, and that they came forward with this wonderful balance between the larger states and the smaller states, but is there anything in the federalist papers about the filibuster?

Senator PRYOR. You know, I am afraid it would take a scholar of the likes of Robert C. Byrd, Senator Byrd, to properly answer that question, and I cannot address myself to it.

I don't think in the federalist papers the filibuster was talked about, and I think many of the filibuster rules have—rules, I should say, have been a process of decisions made in the Senate, decisions handed down by the Chair, and to some extent maybe even custom. But I don't think there was anything in the federalist papers relative to the filibuster, to the best of my knowledge.

Now, if this is on C-SPAN, we will probably get all these callers in, and if so, I would like to know, I will certainly stand corrected.

Ms. HOLMES NORTON. Will all the college professors let us know?

Senator DOMENICI. Ms. Norton, I was just going to say on a completely different subject, I understand that you are a good friend of Chairman John Wilson in Washington, DC, and I wonder if sometime you might find a minute to share with me the nature of his presentation prior to his death.

I would very much like to see where it fits in terms of what I have been hearing and learning. I just thought it might be helpful to some others.

Ms. HOLMES NORTON. I would be very glad to, Mr. Chairman. I must say that I have learned more about clinical depression this week, and I think everybody needs to know a lot more.

Thank you so much.

Senator DOMENICI. Let me just suggest, Senator, I think, I think 1991-1992 deserves just a little bit more attention, and I am only going to do it for a minute, but essentially you see what was happening there in 1991-1992, are that in each of the 2 years, the same bill was—you know, the Democratic leadership tried to pass the same bill, and so the cloture was in one year and the cloture was in the next year, which leads to a conclusion on the part of many of us that it was a political issue.

I mean, clearly it had been finished, and one would think that you wouldn't bring it up for maybe a couple of years, so much of that is literally duplicative bills in sequence annually, and the end product is that only eight of those measures, out of all of that, whatever the numbers represent, did not become law, out of all of the things, did not pass the Senate, out of all of the things that were before us.

I want to leave with one thought. For those who are so quick—and not you, Senator—to say let's just do away with Rule XXII in the Senate, let me suggest, the abolition of Rule XXII in the Senate could very well lead, in time, to having two bodies who act exactly the same, the House and the Senate, because there will no longer be any inhibition on leadership to establish procedures to expedite and limit debate and amendments.

Now, debates would be unlimited in number, but without unlimited debate, we move perilously close—we move perilously close to giving leadership in the future the right to have a United States Senate that acts by rule and other things much like the House, and if there is anything that concerns me, it is that.

Nothing wrong with the House, but let me just give you an example. I am absolutely convinced that the reconciliation bill that cleared Ways and Means and the other committees in the House, I am absolutely convinced that if that were on the Floor of either body for 2 weeks of debate, not indefinite debate, 2 weeks of open debate, I would almost bet and give big odds that it wouldn't pass, because hidden in that monstrosity of a bill, under a rule that provides four amendments, perhaps, that is pretty much, if you allow it, and perhaps 2 or 3 hours of debate on each side, it is going through like a Stealth bill.

Now, that doesn't happen on our side, and I think sometimes that is a good thing to think about. It takes about 2 weeks sometimes for the public to get the message what is in something, and then you hear from them. If you don't have that, it might become law before they even know what is in it, in many cases.

Senator PRYOR. I don't know whether you have been guilty of this, but I have been guilty from time to time of voting for a piece of legislation and then 3 or 4 days later realizing some things that were in there that I didn't realize, and I was one of the first ones

wanting to repeal the statute by the same vote by which it had passed.

Senator DOMENICI. I am going to have to leave. I assume you can Chair for a while.

Mr. DREIER. Yes, sir.

Senator DOMENICI. And if our Senator comes, he can do it.

Mr. DREIER (presiding). I would like to ask one question of you, Senator Pryor, to get back to this whole issue of Floor deliberations. I was fascinated when you talked about this 20-minute time limit on recorded votes, because I know as I talk to my constituents, I don't think they are just catering to me when they say they prefer to watch the House over the Senate on C-SPAN because they see these votes and quorum calls that go on at great length.

I wonder, are there any Senators who abuse this privilege of having 99 other Members wait for them to come back from receptions or meetings or other gatherings before they—

Senator PRYOR. I won't name any names, and I must say it is not Senator Lugar and it is not Senator Domenici, but in the past, there have been individual Members of the Senate who I felt had abused it. They were just kind of—they seemed to just not have any—I don't want to say respect for their colleagues, but they were oblivious to time, and it was a strange sort of a situation.

C-SPAN coverage of the Senate changed this a little bit, and it probably helped the process to speed up a little bit. And by the way, I am still not so sure that we are a better body today because of C-SPAN in the Senate, but I hope we are.

Mr. DREIER. How do you define an extraordinary circumstance? That is what you used to describe this, when you hold the vote open, because we in the House—for the most part, votes last about 20 minutes. I mean, we have the 15-minute time limit and then they go on for four or five minutes.

Senator PRYOR. For example, our elevator system over there is not as good as yours in the House, and from time to time, Members of the Senate literally get stuck in an elevator, I think especially in the Dirksen Building and they have to call from the elevator, and they call the—I don't know who they call, I guess they call the Sergeant at Arms, I am Senator Heflin—I think he was the last one that got stuck in the elevator—and they say, I can't get to the Floor.

So the Majority Leader, in his wisdom and good sense, would say, okay, we are going to hold this vote open. It was certainly not someone trying to abuse the privilege or abuse any Members of the Senate's time or schedule. But I have seen times when I have felt like there was some abuse, I must say.

Mr. DREIER. Well, thank you very much, Senator Pryor. I guess everyone here—I hope that you have been persuaded by the very great arguments made by Senators Lugar and Domenici on the issue of cloture. We appreciate your testimony and look forward to working closely with you on these deliberations.

Senator PRYOR. Thank you. I enjoy serving with you on this committee. Thank you.

Mr. DREIER. Thank you very much, Senator.

We have a vote that is taking place on the House Floor now, so we are going to recess.

Mr. HOYER. Mr. Vice Chairman, if I could, I would like to reschedule. My problem is I have to testify at another hearing. So if I could reschedule.

Mr. DREIER. Are you just telling us what your priorities are, Steny?

Mr. HOYER. In a world of alternatives, I don't have any.

Mr. DREIER. We will stand in recess and our next witness will be Mr. Tauzin.

Mr. HOYER. Thank you.

Mr. DREIER. So we will recess until after this vote.

Thank you very much.

[Recess.]

Mr. DREIER. I am happy to report that as the committee comes to order we have found our next witness on the House Floor, Representative Billy Tauzin. He was first elected to the House in 1980 representing the Third District of Louisiana. He is currently a member of the Energy and Commerce Committee and the Merchant Marine and Fisheries Committee.

We are very pleased to have him with us. He said that he suspects we may have gotten 80,000 recommendations so far and he says he has some new ones. We look forward to your testimony.

**STATEMENT OF HON. W. J. (BILLY) TAUZIN, A U.S.
REPRESENTATIVE FROM THE STATE OF LOUISIANA**

Mr. TAUZIN. Thank you for allowing me to be a part of what I hope will be a very productive exercise in trying to bring some order and sense out of a process which sometimes seems to lack that. It occurred to me as Al Swift and I who serve on Energy and Commerce together chitchatted about our processes in Washington that we have a lot to learn from others who go through similar processes around the country. It then occurred to me that the daily routine in Washington is something that we once experienced at the State level and had to deal with on a more local basis and nevertheless found a way to deal with it.

The most compelling reason to change our process is that Members increasingly find it very difficult to be at all the places they are required to be or to give attention to everything they need to because we spread ourselves too thin and because time overlaps and events overlap.

It also occurred to me that one of the solutions we reached at the State level might be appropriate in Washington if we were willing to be bold and try it.

One of the things we did in order to structure the day more properly and to encourage attendance in Floor debates and to give Members a real chance to be at committee hearings in uninterrupted sessions where people invited from around, in our case the State of Louisiana, in our case here from around the country and the world who come as our guests to testify and bring us information will not be constantly interrupted with roll call votes on whether or not the journal of yesterday's activities ought to be approved or whether or not we ought to all signify our attendance here at the Capitol in a quorum call, is to structure the day in a fashion that

would yield Members time to do all those things in an orderly fashion.

One of the suggestions is that perhaps Congress should consider meeting every day at the same hour, say eight o'clock, and then an hour might be devoted in the morning for those things we do to organize session, the one minutes, the procedural matters to organize the day, and then Congress ought to break its Floor proceedings at say nine o'clock on a regular basis and allow for committees of Congress to then hold hearings and/or markup bills.

If we had a schedule something like the Senate, it has been suggested that we adopt the Senate one-week-on-and-one-week-off schedule or if we did not even, that if you had enough days dedicated in that fashion, you would have ample time between nine and say one or two o'clock to hold uninterrupted hearings or markup sessions that would not conflict with Member attendance on the Floor or Members' requirements to be at some other committee meeting giving enough time for all committees to coordinate their work.

Then at one or two o'clock in the afternoon, Congress could open again its session on the Floor, at which time we could have time to be in attendance without being required to be at committee hearings, more Members actually participate in sessions and we could even participate in the most important committee we all serve on, the Committee of the Whole, where much of the work of the Congress actually culminates in legislation.

Then at the end of that period of time, whatever is required on a given day in a given week, when the Congress adjourns daily sessions, if the committees needed to reconvene and to work into the evening if necessary to conduct a final markup session or to finish a hearing, time could be allotted to do that for those committees which chose to do so.

If we had a 4- or 5-day work period like that regularly with a week off as the Senate does, we could get a lot of business done with a lot of good time for Members to participate in things we cannot find time to do now, which is to really participate in Floor debates and Floor action.

One of the reasons that I think we all try to overextend ourselves is we all have a great many interests to serve at home, and because we serve so many interests at home, we want to be on as many subcommittees as possible to cover those bases and too many Members overreach.

I think we ought to end temporary assignments, that Members ought to be required to make their real choices, which two committees do you really want to serve on. If you are not allowed to take a temporary assignment somewhere else, you are more likely to choose which committees are important to us and we will get a good sense of which committees are important or not and which can be over time changed or eliminated.

A second thought would be to require quorum calls in the morning at all subcommittee and committee hearings. That is a tough one because Members don't necessarily like to have a record kept of whether they are in attendance. But if we had a record kept of attendance at all committee markup sessions or hearings, it could even be possible to set some standards for membership on those

subcommittees; that if you missed the vast majority of the meetings, maybe you are not really interested in that subcommittee and maybe there ought to be a standard, some minimum perhaps for markup sessions, perhaps a different minimum for hearings.

It would discipline us in selecting the subcommittees we are really interested in, really willing to attend and in actually attending those sessions and doing the work. You combine that kind of a concept with a concept of time set aside for committee hearings so Members can't complain they can't be there, make the quorum calls and then I think you have some discipline in the session.

I would recommend that not only do we end the temporary assignments, but that we also end all the exceptions we make to Members serving on more than the maximum committees of this Congress. I think for example if we did something as harsh as that, if we said to Members "You have to choose the committees you want to serve on and the subcommittees you want to serve on and there will be records kept of your attendance which everyone can look at and see whether you are really doing a job on these subcommittees and these committees," that Members would tend to discipline themselves in selecting only the amount of work they can really perform in a given week and thereby end some of these horrible fights I know we are having on our side of the aisle as to whether or not we are going to keep expanding committees to take care of everybody's wishes in terms of satisfying political needs back home to be on a committee, not necessarily to work on it.

In addition, I would like you to consider that technology has changed and that we ought to think about some of these technology changes in light of how they may help us do our work in Congress. I know there is a standard rule that you have to be in chamber to cast every vote and I know why we have the rule and I know why the electronic machines are only in the chamber today, but I want to suggest something to you.

If we are going to continue to have committee sessions while the House is in session and if we are going to continue to have that kind of a conflict, might we not consider at least putting voting machines in the committee room for the sole and limited purpose of allowing Members who are attending committee hearings to register their presence for quorum calls that are not live in five quorums, and for approval of journals so that every morning when our witnesses begin testimony, we don't have to rush off and for a half hour attend to a decision of whether or not the journal of yesterday's proceedings ought to be approved or attend to the chore of indicating our actual presence here in Washington, D. C.

It seems that in those two limited occasions, we could have a system whereby Members could register their presence and/or approve of journals without interrupting the process and detaining witnesses whose time is as precious as ours and whose respect and dignity ought to be acknowledged a little more than the kind of disruptions we provide when they come so far to testify.

I strongly urge that whatever we do in this reform that we also consider perhaps letting Members themselves choose the committees that ought to be eliminated. I realize that I have crossed over into your previous hearings, but it relates to what I am going to tell you. If we had a system whereby Members were disciplined in

the committees, they choose because they have to keep a record of their attendance and we have time for them to do it, and if we limited Members to a real fixed number of committees by ending temporary assignments and by ending these exceptions we make for everybody who asks for an exception, it might be possible then for us to really identify the Committees of Congress that Members are not really interested in working on, not just serving on, and it might be possible at every Congress to provide a rule change that where a certain percentage of Members don't even sign up for a committee of Congress because they are limited to other first choices, that at that point that committee would be on the block, automatically show up at the next meeting of the Congress for a decision on whether that committee will continue in operation or terminate.

It wouldn't necessarily mean an automatic end of the committee; just so that the committee would face that hard question on the Floor of the House and Members would have a choice to make as to whether they want to keep a committee that so many Members have lost interest in that they wouldn't choose it for their real first or second priority.

It seems to me that that way we could isolate, without having a group do it outside of the Members themselves, those committees that do not meet any more with the favor of the Members in terms of their selection of which committees they want to work on.

I can sum up the ideas—I think if we can create some order out of this chaos by creating a system whereby Members know in advance how their time can properly be allocated every day during the week we work here, if we can make more of those days available for us to work and more time set aside for attendance at committee hearings and time genuinely set aside for the committee of the whole, and at the same time force Members to make rational choices about how much work we give ourselves, I think we will do ourselves a favor.

In the end, I think we will have better products, get our work done on time, the American public will understand a little bit better how we function here instead of this awful running around they see, more of us may be on the Floor when cameras are on when it is time for debate, and more of us may actually participate and learn from one another in the debates and the product may be a better product for the American public.

Mr. DREIER. Thank you, Billy. That is very helpful testimony.

I have a number of questions, but first I would like to call on my dear friend, Mr. Swift.

Mr. SWIFT. Billy, you and I discussed this and I am so pleased you decided to come and make a formal presentation to this committee because I think that some of your ideas are among the most innovative we have heard. I am not sure I agree with every one of them, but I think this is something the committee needs to have on record because I think they should each be carefully evaluated.

I am particularly intrigued with your idea that there is a mechanism by which committees become self-evident, whether there should be a referendum as to whether that committee should continue. We have had a lot of arbitrary proposals of how we should get or combine committees. This is an interesting self-executing

idea and I think some of the committees we have been talking about getting rid of probably have greater participation of Members than some that we haven't had any idea of getting rid of at all, and that fascinates me.

I was all for getting rid of the select committees, but there was some reason the institution decided to let those mushroom up. Part of it was somebody figured out how to become chairman of the committee. That is some of it, but also it is such that the Agriculture Committee is not oriented toward dealing with hunger, but toward dealing with agricultural products.

The committee on which we serve, the Energy and Commerce Committee, is frankly, looking at the large economic concerns, not Small Business. I think they would get totally lost in Banking. We hear that that is a committee that might go.

My fascination with your idea is the self-executing nature of the committee assignments because I think that if we sit here and academically try to decide how we are going to reorganize them, we will probably create a pressure for new select committees, where Members have intense interest in something, but in kind of a textbook analysis, it didn't make sense so we did away with it.

The interest will be there. Whether it is LSO's or some other aberration, they are likely to get back. This is a fascinating idea that intrigues me a lot.

Mr. TAUZIN. The key to it is very strict adherence to limited selections. If you don't adopt that notion to begin with, a self-executing provision on committees coming up for referendum, it is not going to work.

Is there any doubt in your mind that if we created ten new committees of the Congress and allowed Members to serve on them, created new exceptions for everybody to serve on them, that they would be filled up within a week?

Members tend to do that. They want to be a part of everything. The moment you say "You can't. You are limited to two real priority selections," then it becomes possible for us to reorganize among some real priority committees. Until you do that, it won't happen.

Mr. SWIFT. You and I also serve on the Democratic Steering and Policy Committee, and the Republicans do it a little differently, but I will bet they have the same problem.

I have been listening to Members complain about how busy they are and it has kind of stopped me before I insist on having another committee assignment again because you and I sit on that committee with people begging and pleading for the exceptions for the temporary assignments and then they find that they can't do them all.

How can you enforce that? We have the rules and I believe the Republicans as well have rules in their conference, and neither seem to get enforced, because it seems to me the leadership has to play bad guy when they say no. Shouldn't there be some higher hurdle that a person who wanted an exemption would have to go over?

Mr. TAUZIN. If you premise the notion of committee reform on the concept of a self-executing referendum, then it seems to me that for the leadership of either party to begin recommending ex-

ceptions to it defeats the whole concept and that has to be well understood going in.

Perhaps you could even put into the rules of the House as part of the fixed rules some additional hurdles that Members would have to get some kind of approval, not just of their own party, but some approval of both parties to make exception to that rule. I think that would be tougher to do.

We see Members coming from the Democratic Party to Steering and Policy begging the leadership for some extra assignment. The leadership wants to please its constituency, which is the members of its party, and tends to hand them out and the next thing you know they say we will negotiate with Members on the other side, they do.

The other side sees an opportunity to please somebody on the other side of the aisle and we are expanding again. It seems to me that if the Member had to get approval of both parties first before going to either one of the leadership groups, it might make it more difficult for that process to keep expanding.

MR. SWIFT. In the attendance in committee that you would have by having quorum calls, et cetera, you weren't suggesting any self-executing thing there, were you, that if a Member didn't show up such-and-such times, he would lose the committee assignment?

MR. TAUZIN. I think you could if you wanted to get tough. You and I probably have served on organizations that did that. At some point, they drop you when you don't show up and make room for somebody who wants to work. We could get that harsh and actually set up a strict limit, some fixed limit for mark-ups and some different limit for hearings, as one probably is more important than the other. But even if you kept quorum call records, I suggest you would have a self-executing system going in right away, because somebody is going to want to see those records and some opponent is likely to make hay of the fact that we elected a Congressman that never shows up for the markups and the hearings of the committees he is a Member of.

MR. SWIFT. You probably wouldn't need to get more elaborate than that. Very interesting ideas.

MR. TAUZIN. You may not need to, but I'm saying if you want to, it is certainly unheard of in a lot of organizations to say if you don't show up, you can't belong.

MR. DREIER. Thank you, Al.

Billy, your testimony is innovative. They are new proposals which we haven't heard of here. Frankly, I think that there are a number of concerns that you have that could be addressed in other ways. There are 266 committees and subcommittees for the 535 of us in the House and Senate. It seems to me that one of our priorities should be to try and reduce the number of committees and subcommittees here in the Congress.

There are proposals to go down to as few as 8 committees per House and I rather doubt that we will go that far, but I think that many of the concerns that you raise could be addressed if we were to take that route. Proxy voting in committees, you have advocated in your proposal not quite proxy voting on the House Floor, but you would allow for voting on the House Floor from committee rooms.

It seems to me that if we were to eliminate proxy voting in committees that we would certainly increase the attendance level there. To my knowledge, attendance in committees is kept today. Every committee that I was on before I went on to the Rules Committee, my opponent in the campaign could tell you what my attendance record was in those committees and subcommittees.

That information may be difficult to find, but I believe that it is available because the clerk of the committee, the person keeping the records for the committee, does have those Members who were there on record, and I may be wrong—maybe they don't that in the Energy and Commerce Committee, but the other committees with which I am familiar, they do that today.

One of the things we have been advocating is doing, as I have been doing over the past several rules debates on the House Floor, listing the attendance in the Congressional Record. I have taken the recorded votes on rules as we have gone through this battle on open and restrictive and closed rules and I have printed in the record when I have been managing a rule the vote on—that has taken place in the committee in the record.

So one of the ways we might get at this is to take the information which is already made available of the quorums which you called for in the committees and printing in the Congressional Record so it is out there, but I think that information is already available.

Mr. TAUZIN. It may be available, but not every committee has quorum calls at the beginning of their sessions.

Mr. DREIER. I don't think they do it by quorum calls. I think they just keep attendance.

Mr. TAUZIN. The clerk checks off somebody's name when they walk through the room and that is all some people do during the course of a markup is walk through the room or walk in to deliver a proxy statement. I agree it is out of hand, but I would encourage you to consider that unless you adopt some schedule such as I have suggested, all of this is not going to work anyhow.

We will still find it impossible to make all the hearings, to make all the markups, even if you know there is going to be a recorded quorum and your presence is going to be reported in the journal. Even if we made the information readily available to the press and to our opponents, it would still not solve the problem of Members.

Mr. DREIER. But if you have two committee assignments per Member, people won't have an excuse not to be there.

Mr. TAUZIN. You are getting to the heart of what I am saying. If you limited Members to real areas of interest, two assignments; if you made real time available for them to be in committee so there is no excuse that I had to be on the Floor, I had to be a part of the committee of the whole discussion; and if you also at the same time assimilated and accumulated that information about attendance and made it readily available through mandated official quorum calls, then you might have a system that really works, and even then I think you would have to tinker with it as you go along.

Mr. DREIER. You talk about how other organizations will kick someone off of that organization if that person isn't there working. Should we eliminate proxy voting?

Mr. TAUZIN. I would have no problem with that. You would have a real problem with a lot of chairmen who exercise the proxy vote as a means of controlling the committee. I chair a subcommittee. I would have no problem eliminating proxy voting.

Mr. DREIER. The only thing is if we do eliminate proxy voting, some Members will say "Hey, I don't need to have twelve subcommittees listed on my letterhead. I have to show up for these—"

Mr. TAUZIN. That is a hard thing to sell to the leadership in the House and to committees. I would tell you in answer that unquestionably the provision of proxy voting, the possibility of proxy voting contributes a great deal to nonattendance at hearings and markups. It is so easy to just send the document in and go about your other business because.

We have so much other business to attend to. If you don't have the conflict of time with committee and the Floor, you at least make that less needed, less required, if you will, by Members who have such a crush of time to deal with.

Mr. DREIER. I am not one who is particularly ecstatic about going to the House Floor for journal votes or quorum calls. We came together in 1980. I think since I have been here, I may have called for a journal vote once or twice.

Mr. TAUZIN. I was angry with you, too, and I know Al Swift was angry.

Mr. DREIER, if not the journal vote, other procedural votes are called on the Floor and they primarily center around Whip checks. Leadership on your side and our side have a desire to find out the direction Members are going on the piece of legislation so they say the only way we can do that is if we call a journal vote, to find out how many Members are in town at a time.

I don't love racing over there from meetings that I am in. I still do believe that it does serve a purpose for us, all 435, to come together if the leadership does want to do something like that. I have found that from our side usually we are trying to whip people in line on something to find out how they are moving on an issue.

Mr. TAUZIN. There is a reason to gather us together, but if you adopted a schedule that didn't conflict with committee time, you wouldn't have that problem. If however you have a conflict that is currently present between committee time and Floor time, all I suggest to you in those two limited instances where you simply acknowledge your presence here by voting for the journal or acknowledging your presence in a quorum call to see who is in town, that with technology you could easily do that from the committee with a voting box from committee that permits that to be done.

Mr. DREIER. The whipping process that Members stay in committee, I think that is the goal of that and the timing, you say put votes together en bloc but at 10 o'clock in the morning a measure that is going to be considered the next day should be counted by the Members of the whip organization.

Mr. TAUZIN. That is why I say preferably if you make a separate time for Floor action you solve that problem the best way. If you can't, I am saying that at least in those instances you ought to consider the possibility of voting machines in the committee room. I ask you to consider whether or not for the convenience of Members who have to whip other Members on a given issue we should con-

tinue this practice of horribly interrupting the process of a committee that gets cranked up, members are present, you have them there, as many as you could gather, the witnesses are ready to go, and they get into the middle of their testimony and we have to cast these momentous votes on the journal. We are talking about a half-hour delay to get it reorganized and even longer to get the Members back in that room who were there originally.

Mr. DREIER. With 266 committees and subcommittees in the House and Senate, do you think that we should reduce that number?

Mr. TAUZIN. I think so, but I think we ought to do it in a way where Members themselves make that selection. I find myself concerned as Mr. Swift has pointed out that some of the committees that are being targeted or talked about for elimination are some of the more popular committees, the ones Members want to serve and work on. The other committees not necessarily attended very well somehow are insulated in the process. It seems to me members ought to make that decision and one of the best ways to do it is with some sort of self-executing referendum.

Mr. DREIER. I think subcommittees of the Congress that have a very low attendance level and have the potential to be merged into other subcommittees or eliminated are those committees where the level of participation is not particularly high. I know there are examples of full maybe non-major committees which we have discussed the potential of eliminating which may be merged in. And there is a high level of participation. I guess the case I would make is that because there is a high level of participation with these as a non-major committee does not mean that the level of participation as a subcommittee instead would not be equally as high.

Mr. TAUZIN. Then let me suggest that rather than have a standard of attendance for Members to remain in the subcommittee, you could very well have a rule that said if attendance at subcommittee hearings dropped below a certain point that subcommittee went on the block, that the committee itself had to consider whether to retain that subcommittee, in other words making the Members of the committee face the hard choice of whether they want to continue the subcommittee in existence and not attend it or whether they really want to be in attendance and do the work.

Mr. DREIER. Then your suggestion would be to transjoin every committee that I would want to eliminate in the Congress and then not attend?

Mr. TAUZIN. I would certainly not want to see you abuse it in that fashion. Every system you are going to come up with is subject to some kind of abuse. I have been here 13 years like you since 80, and I would love to reverse public opinion polls about Congress. I mean this. Most of us go home and we are pretty well liked. Most people genuinely like their Member of Congress, with rare exceptions. But their esteem for the institution is dropping rapidly, and a lot of it is because we don't seem to work very well. I would much prefer Americans have a high regard for this institution and the work it does for this country than they have for individual Members. I think that is the charge for this reform group. If we can adopt procedural changes that give us a chance to build up the esteem of this body whether it is to sacrifice a committee that I

love or to eliminate some work I like to do in order to get done better what we are really interested in doing, whatever it takes I think we ought to do it.

Mr. DREIER, Mr. Swift.

Mr. SWIFT. It seems to me that your suggestion for limited voting in the committee rooms was as a second choice. Your initial one was to simply schedule the time, committee and Floor, so that it didn't conflict, and then you said if you can't do that you might want to consider——

Mr. TAUZIN. That is right.

Mr. SWIFT. I like your initial proposal best.

Mr. TAUZIN. We initiated the initial one in Louisiana and it worked well. The attendance levels of subcommittees went up, the volume went up. We got things done.

Mr. SWIFT. I think it is one of the best suggestions we have had. The other point with regard to joining all the committees and not attending so you could destroy them, you couldn't join more than two committees and that would force that to be a very meaningful referendum.

Mr. DREIER. Thank you, Mr. Tauzin. Your testimony has been very helpful and we look forward to using it.

We are pleased to welcome our final witness of the day, Senator Tom Harkin from Iowa. Mr. Harkin was first elected to the House in 1974 and subsequently elected to the Senate in 1994. His committee assignments include Agriculture, Nutrition, Forestry, Appropriations, Labor and Human resources and Small Business.

Thank you for being with us. We look forward to your testimony.

STATEMENT OF HON. TOM HARKIN, A U.S. SENATOR FROM THE STATE OF IOWA

Senator HARKIN. It is a privilege to be here and I thank you for permitting me the honor of testifying before this very important committee. In fact, I can't think of a more important committee at work in the Congress than what you are doing.

It is a pleasure to be here with my former colleague from the House Congressman Swift. My testimony pertains only to the rules of the Senate. I have no suggestions for the House other than that the House should have 4-year terms rather than 2-year terms. I think it is time that we changed the Constitution and provided for four-year terms. That is not why I am here. I want to talk about an issue that is just vexating in the Senate and it has gotten out of hand, rule 22, the unlimited, the cloture vote on ending unlimited debate. We do have to recognize the important tradition of the Senate, the unique role that the Senate has in the American legislative process.

At the same time, we have to recognize the Senate's interest in preserving the respect of the American people for our institution and the need for the Senate to be able to take decisive action on the important issues of the day. These issues meet in the balance between the traditional right of any Senator to engage in extended debate and the power to invoke cloture under Rule 22 of the Senate.

Unfortunately, the use of the filibuster or the threat of the filibuster has exploded in recent times. I know you have had Norman Ornstein here and Lloyd Cutler with whom I have spoken on numerous occasions about this issue.

Since the cloture rule was introduced in 1918 we have gone from an average of less than 2 cloture votes per Congress prior to 1970 to nearly 37 per Congress since that time, and last year some 48 cloture votes were required in the Senate. This year, despite a unified government—I mean by that a Democratic President, Democratic majority in the House and the Senate for the first time in 12 years the problem of gridlock is worse than ever and the American people can't understand this.

They say "My, gosh, the Democrats run the House and the Senate; you have the President. Why can't you get things done?" Last week we had a good example of that in the Senate. We had to file a cloture petition on the nomination of an Assistant Secretary position, almost unheard of in the past.

As I speak, cloture is expected to be filed on desperately needed campaign finance reform legislation that the American people want and are commanding. I believe the abuse of the right to extended debate is clear today. As the number of cloture votes has increased so has the anger of the American people in the inability of Congress to get things done.

The majority is willing to make a decision and live with the judgment of the people of this country on whether that decision was right or wrong. The minority insists on blocking the majority from even making a final decision.

The inability of the Senate to act decisively harms the institution's reputation and I believe the national interest.

Now, I support the right to extended debate. It is one of the great traditions of the Senate. I have occasionally myself voted against cloture and have worked against allowing certain expedited procedures in the Senate that would bypass the filibuster rules for the extended debate procedure of the Senate, tradition of the Senate.

However I believe that debate should be used to persuade and to bring issues into the public light; not to delay or prevent a clear majority from taking action. We need a cloture rule that will respect the great tradition, one which in the end allows the Senate to act and act decisively.

A Senator once said "It is one thing to provide protection against majoritarian absolutism; it is another thing again to enable a vexatious or unreasoning minority to paralyze the Senate and America's legislative process along with it."

I wholeheartedly agree with his statement. I think that is as true a statement as Senator Dole has ever made on the Senate Floor. I think that was made about 1970 or 1971.

I would like to propose a variation of something that Senator Dole proposed when we formed the cloture rules on the Floor some years ago when he made that statement I just quoted. It is similar to a recent proposal by Norman Ornstein.

I call it the ratchet proposal. Under my proposal the first would be the same as it is today. It would require a votes of three-fifths all Senators chosen and sworn. With no vacancies in the Senate, that would be 60 votes, as it is today. If that vote failed to invoke

cloture, the next attempt at cloture, which could not take place until the second subsequent day in session, would only require 57 votes.

In each subsequent vote which would be held on the second subsequent day, the number of votes required would be reduced by three. Thus the third vote would require only 54 votes and the fourth would require a simple majority of 51 votes.

My proposal would preserve the rights of the minority to use lengthy debate to bring their case to the American people and let the public know why it is that the minority is not being heard on an issue or why the majority should not pass this legislation as it is constituted. Yet it would ensure that the majority, if they were sufficiently committed, could have the opportunity to have a vote on and to pass the pending legislation.

If the minority is persuasive in their argument or a compromise can be reached by the fourth vote, they might win over enough votes to carry their position. If not, they would have had an ample opportunity to state their case in detail before the Senate and before the public.

Let me comment on the argument that Lloyd Cutler made here last week. Cutler argues that the current super majority cloture requirement is unconstitutional essentially because a majority can be denied the opportunity to decide a particular issue before the Senate. This proposal that I offer would satisfy the constitutional challenge that Mr. Cutler suggests.

Since the last vote would be by a simple majority, a majority of the Senate would ultimately decide the issue. Intermediate votes on closing debate would serve the vital interests of the Senate and the Nation in ensuring that the issue receives a full comprehensive airing in the Senate. I understand that Mr. Cutler was asked about the constitutionality of Norman Ornstein's proposal and he agreed that it would be constitutional.

Therefore, Mr. Chairman, I believe that my proposal is constitutional and it would strike a fair workable balance between prompt action and deliberation and I think the American people would agree. The American people have voted for change. They want an end to gridlock. They demand that the Senate take action to improve the economy, cut the deficit and to stop the squabbling. I can't think of any change that would do more to do that than to revise the cloture rule.

Mr. Chairman in essence that is my suggestion. I would hope that this committee would take it up seriously. Something has to be done to change this filibuster tradition in the Senate. I believe in tradition as much as anyone else, but there comes a time when tradition has to meet the realities of the modern age. The minority's rights must be protected. The majority should not be able to run roughshod over them, but neither should a vexatious minority be able to thwart the will of the majority and not even permit legislation to come up for a meaningful vote.

Mr. DREIER. Thank you, Senator. Your testimony is very helpful. [The prepared statement of Senator Harkin is printed in the Appendix.]

Mr. DREIER. Mr. Swift.

Mr. SWIFT. I think House Members need to be careful how they tell the Senate to reform itself and vice versa. It does occur to me that part of the heritage of our country was that the United States Senate was established by the founding fathers who were democrats but sometimes reluctantly so.

Senators originally were appointed by State legislatures so that there would be a chance for someone who was responsible to keep an eye on that other House over there where all of these populist folks might be getting away with runaway ideas and I think that sometimes that tradition of the Senate is based on the idea that you have to have the United States Senate sitting there to prevent the House of Representatives and the public in general from running off and doing foolish things.

I think your ideas on filibuster make sense. We had a Senator talking about holes. From the incredibly biased House perspective, it seems to me something less than radical to suggest that a major legislative body in a democratic institution be democratic; small "d".

Senator HARKIN. I support what Jim Exon said on the holes. That is the craziest thing in the world. We have to do away with the system of having holes also.

Mr. DREIER. Thank you, Mr. Swift. We are not going to ask you, Mr. Swift, to talk about the relationship between the United States Senate and the Republican Party from your perspective having been in the state legislature. Senator, you have a unique perspective.

I served with you in the House for two terms before you went to the Senate. You have a perspective having served in both bodies. One of the challenges our committee faces is how do we improve relations between the House and Senate. What recommendations might you have as to how we could improve the way in which we get things done between the two Houses?

Senator HARKIN. I just filled out a form; in fact, I think it came from your committee. Last evening I was penning out some thoughts on that. That was one of the questions on that sheet that you sent out. Let me just as a way of reference—when I came to the Senate a lot of my colleagues in the House, my classmates I came with in 1975, were always frustrated by the fact that they could never associate with Senators.

There seemed to be a separation there. We vowed that we were going to work closer together in the future and that vow was observed more in the breach than in the practice. It is because there was no institutional framework set up for the House and Senate to operate together. The only time is when we meet across the table in conference committee and by that time the die is cast; there is your side and we have our side and we try to make deals.

I believe that there ought to be a new system where the committee structure—I think we have too many committees and subcommittees. I serve on too many subcommittees.

Mr. DREIER. How many are you on?

Senator HARKIN. I have lost count. I serve on four major committees and I probably serve on at least three subcommittees of each one, four on some. So I bet I serve on anywhere from twelve to fifteen subcommittees. That is nuts. No human being has the time for

that, but that is just the way the system is set up in the Senate, so it has to be reduced down.

By reducing the number of committees we are on, streamlining that and having a process whereby legislation in the beginning is jointly worked out by conferences of the house, the appropriate House committee and the Senate committee that have equal jurisdiction—in other words, say that I am introducing legislation dealing with education.

Rather than just introducing it in the Senate and having it work its way and having somebody in the House do it, having it referred to a joint House-Senate committee that would look at the legislation—the same thing would come from the House would go to the same joint committee to be worked out and let that committee propose to both the House and the Senate a final product one way or the other or dispose of it one way or the other in the beginning. Then let both bodies work on it and come back together in the end.

I think that would speed up the process and work out problems early on. The proponents of the legislation could work out their problems early on and I think it would expedite the legislative process to get that done in the beginning, not just in the end.

Mr. SWIFT. Even if you could just get the respective committees to decide what they are going to take up so you would have the same agenda in both Houses. I have had occasion where the Senate was working on one environmental issue and I on another and we went by each other for the whole Congress, whereas had we met and said these are the priorities we are going to work on we would at least get in the same hymnal if not on the same page.

Mr. DREIER. The important question of parallelism—should we establish parallel jurisdiction between the House and the Senate for certain committees?

Senator HARKIN. I am not sure.

Mr. SWIFT. I see the logic to it.

Senator HARKIN. To a certain degree, yes—I speak from the distinction of having served in the House and having served in the Senate. When I was in the House, I knew a few things, I knew them really well. I only served on two committees. I felt that I was pretty expert in a couple of areas.

Mr. SWIFT. Dairy Legislation, which is very complex, you were the expert.

Senator HARKIN. I remember that. I have moved beyond that. You get that in the House, but in the Senate we are spread so thin we know a little bit about a lot. In parallel, a lot of times we lean on House Members for the kind of expertise that we maybe don't have. They maybe lean on us for a broader perspective. So I think that parallelism is pretty good.

I think we can lean on each other.

Mr. DREIER. Thank you, Senator. Your testimony has been very helpful and we will take it into consideration as we proceed with the deliberations and thanks for your kind words about this committee too.

Senator HARKIN. I think what you are about could have a more profound effect on running of this country. What you decide here and how you come out with the changes I think could make a world of difference in how this Congress is run.

Mr. DREIER. Thank you very much. The committee stands adjourned until Thursday morning.

Thank you.

[Whereupon, at 4:50 p.m., the subcommittee was adjourned, to reconvene at 10 a.m., Thursday, May 27, 1993.]

*Statement 1
Bill Brown*

Chairman Hamilton, Vice Chairman Dreier, Chairman Boren, Vice Chairman Domenici:

In your letter of May 10, in which you invited me to testify this afternoon, you indicated that two of the topics on which I might be able to provide some background for your study would be the evolution of the present referral process and issues involved in the deliberative process.

I have been with the House since 1958. One of the first tasks I was given when I began working as Assistant Parliamentarian with my predecessor, Lewis Deschler, was to read the bills that were dropped in the hopper. This not only gave me a feel for the breadth of legislation that was being proposed by Members but introduced me to the bill referral process. Referrals were simpler then: the committee with the predominant jurisdictional claim under the House rules got the bill. If the bill amended the Internal Revenue Code, it went to Ways and Means. The process was time consuming, for there were so many bills. It's interesting to note some of the statistics from that 85th Congress: 15,660 bills were introduced; the 20 House standing committees reported 1452 public bills, 998 private bills. That Congress saw a high-water mark for the number of introductions, although the number of bills placed in the hopper increased dramatically again in the

89th through the 95th Congresses. The total number of introductions was reduced by the rule, first adopted in 1967 and liberalized in 1979, permitting unlimited co-sponsorship; so in recent congresses the number of introduced bills has been in the range of 7000 to 8000. In the 102d Congress, 7771 measures were introduced, and the 22 standing committees reported on 767 public measures and 63 private bills.

In the 85th Congress, the concept of joint referrals was not even in our lexicon. When faced with enacting a major highway bill, which included funding provisions out of the Highway Trust Fund, the committees on Public Works and Ways and Means considered their respective jurisdictional parts, one reporting the authorization title to the House, the other the financing title. The two parts were joined in the Committee on Rules for floor consideration.

The present clause 5 of Rule X, requiring the Speaker to refer measures to all committees having jurisdiction, was proposed in the Committee Reform Amendments of 1974 as part of a comprehensive package of committee jurisdictional realignments contained in a report from the Select Committee on Committees, the Bolling Committee. When, during floor consideration of the Bolling recommendations, an amendment by Representative Julia Hansen was agreed to which kept most of the existing committee jurisdictional alignments, the architectural balance of the Bolling proposal

was skewed. The final resolution retained a mandate that the Speaker exercise his referral authority in a manner which "to the maximum extent feasible" would assure that every committee with jurisdiction over a part of the proposal have an opportunity to consider and report on such provision. The rule required the Speaker to ignore referral precedents which detracted from this mandate.

Thus beginning in the 94th Congress, the Office of the Parliamentarian was faced with complying with a new rule with little legislative history or guidance. The intention of the Bolling Committee had been to have multiple referrals only in a relatively few situations where a measure would contain matter within the jurisdiction of more than one committee, an unlikely event if the consolidation and modernization of committee jurisdictions had been adopted. Your Committee has heard presentations about the increase in multiple referrals since the rule was put in place in the 94th Congress. I have seen statistics showing that the percentage of joint referrals has grown from 6 percent of introductions in the 94th Congress to about 20 percent today. Why the increase?

When we first began applying the rule, we were reluctant to complicate the referral process and we preferred to make a single initial reference and use sequential referrals if required when the primary committee reported. We

made joint referrals only where the bill had distinct divisions of jurisdiction, a tax title or direct amendments to laws so closely identified with a particular committee that their jurisdiction could not be ignored.

But committees were quick to begin "claiming" their right to a referral under the new rule. The Speaker began to accumulate -- and we to monitor -- a large letter file from many committees, pointing out provisions within various bills which fell within their Rule X assignment and asking that their jurisdictions be acknowledged and protected at the time of introduction, not at the time of reporting. Various committees wrote the Speaker staking out jurisdictional claims on all future introductions on various topics. To put it mildly, committees began to be very vigilant, scrutinizing all bills for matters over which they could claim jurisdiction.

And this jurisdictional vigilance quickly spread to other areas -- to non-germane Senate amendments and matters committed to conference. Except for highway bills, where Public Works and Ways and Means had long been made conferees on their respective titles, most conference appointments were relatively straightforward. In the 85th Congress, the number of conferees rarely exceeded seven from the House. Some committees had the tradition of using but three managers to represent the House. But with the advent of multiple referrals, and an increasing awareness and concern with

the proliferation of non-germane Senate amendments, a perception developed that there was a relationship between being represented in conference and future referrals of the subject matters in disagreement. Even though conference committees are ad hoc committees, not enduring bodies, standing committee advocates are apt to argue that "we were on the conference committee that initially wrote that proposal," and therefore they claim any future referrals of that subject matter. The Speaker has stated on more than one occasion that conference appointments do not necessarily bestow jurisdiction; but his admonition has gone largely unheeded. Thus the pressures to complicate conferee representation have come both from the expectations of House Members and from the proliferation of unrelated amendments from the other body. We have had as many as 156 conferees appointed on H.R. 3, the Omnibus Trade Act in 1987. They represented 14 committees. Banking alone was on 23 subconferences. Reconciliation bills have of course had a large number of managers for the House.

I would point out in conclusion that the Speaker has a lot of discretion in the use of his referral authority under Rule X. He can designate lead committees; he can put time limits on referrals. He has a variety of tools at his disposal, and he has used them in a few cases, for instance where a looming adjournment created a necessity for fast committee action by a sequential committee. However, tailor-made referrals for every introduced

bill would take up a lot of time, since the length of the referral and the sequence of referrals would have to be negotiated in each individual case. But the flexibility is there and can be utilized for measures that are high on the legislative priority list.

The other topics you suggested I ponder were "issues in the deliberative process." This could cover a lot of ground, from committee hearings and markup through floor consideration.

I've discussed this with my colleagues in the Office, and we have concluded that we have no magic series of amendments which will perfect the process. There are inherent conflicts between the necessity for the House to maintain its legislative timetable, the hours which committees must have to complete their work product, and the personal and constituent pressures on Members. There are various combinations of suggested rules changes which might minimize these conflicts. As Parliamentarians, we do not view our role as advocates for this rule or that revision. We are in a sense technicians, legal technicians, interpreting the language of rules in the light of precedents. We are willing, of course, to advise Members in a private way about the effects of language. And we will continue to work with Members on both sides of the aisle in the development of new rules or in revising old ones and integrating new concepts into existing rules. But we are not advocates.

However, I do discern a broadly based and bi-partisan hope among Members that the quality of debate can be enhanced, that it be more spontaneous, more focused on issues, more relevant to the amendment process. As Parliamentarians we feel that there is enough flexibility in our present rules to accommodate such ideas as clustering debate on major bills by topic, spreading the opportunity for debate time, and even for structuring more formal topical debates in the Oxford mode, if that were to be desired.

I would like to make two more points. The House works better if all Members have a proper understanding of the rules under which we operate, and our office remains available and willing to help facilitate their awareness through orientation. Finally, I would like to renew our suggestion, first made in the 100th Congress, that the rules should be codified to make them more coherent and uniform in style. Our office stands ready to cooperate with the joint leadership in both of these endeavors.

*History of
Office
Bill Brown*

Joint Committee testimony:

Chairman Hamilton, Chairman Boren, Vice Chairman Dreier, Vice Chairman Domenici, Members of the Committee.

I am Bill Brown (William Holmes Brown), Parliamentarian of the House of Representatives.

The Committee has requested that I appear today, as I understand it, not to recommend organizational, structural or procedural changes in Congress, but to respond to questions which the Committee may have regarding the Office of Parliamentarian, how it operates, its functions and responsibilities.

For the person occupying the position of Parliamentarian to appear in a formal manner before a Committee is itself unusual. To my knowledge, it last happened in 1945, when my predecessor, Lewis Deschler, appeared before the Joint Committee on Organization of the Congress--the LaFollette Committee. At the time of his testimony, he had been Parliamentarian of the House for over 17 years. I point that out only to note that I have at this point in time been Parliamentarian for almost 19 years, so I betted his record for remaining somewhat invisible.

The position of Parliamentarian had its origins in 1857, when Speaker Orr of South Carolina appointed a young man named Thaddeus Morrice as his "Messenger." Morrice had a great memory and was able to help the Speaker find prior decisions of the Chair quickly when needed. He grew in the position, proved himself somewhat indispensable and so when he died in 1864 the slot was retained. The name of the office changed, from Messenger, to Clerk to the Speaker, to Clerk at the Speaker's Table, and in the 69th Congress it was given its present title. 18 persons have held the job since its inception 185 years ago. Statutory establishment of the Office did not occur until 1977, although the Position of Parliamentarian had been recognized in statute before that time. Public Law 95-94 specified that the Parliamentarian should continue to be appointed by the Speaker, but specified that the choice should be without political affiliation, thus codifying the practice that had been established by the "common law" of the House.

I would like to return for a moment to Lew Deschler's testimony in 1945. His description of the responsibilities of his Office at that time provides a good point of departure for me today: a major portion of his time then was in reading and referring, on behalf of the Speaker, the thousands of bills, resolutions, and executive communications introduced in or received by the House. That activity still occupies a good proportion of our time; co-sponsorship of bills has reduced the number of individual bills introduced in the House; but the process has been complicated by the adoption of the 1975 rule permitting referrals to more than one committee. He stressed the importance of being accessible and available to the Members of the House for various questions on procedure and detailed the enormous amount of time

spent answering telephone inquiries. That remains true today; with the increased number of committee staff and with more staff in Members' offices, a large proportion of our office time is spent with legislative staff, either with staff visits to our office or by inquiries on the phone. He stressed his philosophy that the business of the House is to legislate; therefore he viewed his job successful when the amount of time spent in controversies over rules and their interpretation was reduced to a minimum. He viewed the challenge of his job as one of allowing the House to devote its time in debating the merits of legislation before it and not squander its time in arguing procedural questions. We view our job the same today and therefore we spend a great proportion of our time anticipating, explaining, and even attempting to arbitrate, disagreements over rules and their interpretation. Finally, he stressed the non partisan nature of the position and of the Members called upon to preside. I quote from his testimony; "They are absolutely fair and impartial in their decisions. Partisanship, as far as I know, never enters into a decision of a parliamentary problem, and the Members of the House, realizing that, have refrained from taking any appeal"

I want to state that all of us in the Office have the same commitment toward our jobs with the House. We do not view our roles as partisan. We make every attempt to hear and understand both sides of parliamentary questions. We work closely with staff from both sides of the aisle. In my 35 years here, no Speaker or Chairman of the Committee of the Whole has ever instructed me to write a partisan interpretation of a rule. When the Speaker puts on his constitutional hat, he decides questions of order based on the rules and precedents, without political coloration.

In the intervening 48 years between the testimony of Lewis Deschler and my comments today there have been major changes in the ways the office functions: at the time of his testimony, he was able--just barely-- to respond to the needs of the institution with only two person in the Office, himself and one assistant. By the time of his retirement in 1974, the complement of the Office had grown to six. In the last 19 years, we have held the line pretty well: we now have 5 attorneys and one clerical assistant, Gay Topper, whom you all would recognize as the timekeeper on the rostrum. the Deputy Parliamentarian, Charles Johnson, has been with the Office since 1964; Tom Duncan began in 1978; John Sullivan in 1987, after having served 3 years with the Armed Service Committee. Muftiah McCartin began as a secretary in 1976, finished her undergraduate work while a member of our staff, then received her law degree from Georgetown in 1991. In the Precedent's Office, we have two legal editors and two clerical assistants, all who have been part of our team for at least 20 years. We are a career motivated office, as you can see. Lew Deschler, you may recall, served as Parliamentarian from 1928 until 1974--a span of 45 years. That's a hard record to match! But because the job is such a challenging and interesting one, it is understandable that he stayed the distance.

Each of us in the Parliamentarian's Office is both a generalist and a specialist. When I was an undergraduate engineering student in college, and studying structural design, I recall the moment of discovery when I found I could visually "feel" the

points of compression and tension in a complex structural design. Take the Budget Act, for example. The complex web of rules, precedents, statutory provisions is like that. You have to live with it intimately to understand its design and the inter-relationship of its parts. Determining the budget implications of legislative language requires careful analysis and a real feel for the nuances of the Budget Act. If you don't deal with it daily your "feel" for the relationships tends to dissipate. Each of us still reviews each introduced bill and committee report to determine the proper reference to committees or calendar. All try to be present when a committee delegation comes to discuss a jurisdictional claim. Because committee jurisdiction is so contested, a major commitment of time has to be put into decisions about joint or sequential referrals. Preparation of conference appointments, delineating the portions of the House bill and the Senate amendments which may be addressed by different committees of jurisdiction, take an inordinate amount of time. Our office is intimately involved with committees about the rules governing hearings and markup of bills. The amendment process in committees is often imaginative and we are constantly called upon to discuss with Members and staff the different procedures which can be utilized in committees to achieve their legislative aims. Finally, the preparation of the House Rules and Manual for each Congress, and the continuous work on the compilation of the precedents of the House, are responsibilities that we take seriously and which demand our daily attention.

I would like to conclude by suggesting that while computers and the information technology systems are of an immense help in many aspects of our work, in the bill referral process, or in budget act scorekeeping, for example, it is ultimately the quality of the human input which makes this legislative body function well or poorly. And a vital part of that input comes from what I will call the "institutional" staff, dedicated to making this place work, anxious to serve without regard to partisan considerations. I hope that in the design and implementation of the various reforms that emanate from this Committee, the vitality of that institutional core staff will be preserved and enhanced.

Thank you very much.

Bill Brown

2/9/93-4:00

Major committee jurisdictional overlaps

Agriculture (Agri)

- with NR on forests, multiple use areas
- with BF and EC on commodities exchanges and futures regulation
- with EC on food purity; poultry inspections
- with EL on food nutrition and feeding programs
- with FA on CCC food distribution abroad
- with EC and MMF on fish inspection, fish farming
- with PW on stream and soil erosion

Appropriations

Armed Services (AS)

- with EC on naval petroleum reserves
- with EC, NR or ST on nuclear issues (where military applications at issue)
- with EC on Superfund cleanup of military bases
- with FA on arms control inspections, NATO (and status of forces), export licenses
- with VA on educational programs
- with BF and EL on defense economic conversion
- with BF on defense production

Banking, Finance and Urban Affairs (BF)

- with EC on bank powers in new fields like securities and insurance; insurance industry regulation generally
- with WM on government securities initial issuance
- with PW on regional commissions; disaster insurance
- with ST on earthquake insurance
- with AS on defense production

Budget

District of Columbia (DC)

- with PW on regional transportation (Metro)

Education and Labor (EL)

- with Ways & Means on ERISA
- with Agri on certain feeding programs; land grant colleges
- with WM on workfare (work incentive) requirements
- with EC and PW on labor disputes also involving railway or airline labor laws (where EC and PW now exclusive)
- with Jud on prison labor

Energy and Commerce (EC)

- with AS, NR, ST on energy policy, authorizations for Dept of Energy
- with NR on regulation of commercial nuclear industry, nuclear waste disposal
- with PW on Superfund, transportation issues involving railroads, magnetic levitation, automobile and other commercial vehicle safety standards

- with WM on health (part B medicare especially)
- with Agri and MMF on fish and food inspection
- with Agri on FIFRA; Food, Drug and Cosmetic Act
- with ST on research and development "commercialization"; standardization
- with FA and BF on foreign investment in US

Foreign Affairs (FA)

- with SST and MMF on global environmental issues
- with MMF on fishing and whaling agreements
- with Agri on food distribution overseas
- with AS on arms control, export licenses, weapons inspection, NATO
- with NR on status of Micronesia and trust territories

Government Operations (GO)

- with any committee on new commissions, subdepartmental reorganizations
- with Rules on budget process changes
- with PW on public buildings regulation
- with EC on indoor clean air
- with JU on "takings" and administrative procedure
- with AS on defense contracting procedures and standards

House Administration (HA)

- with EL or PO on labor issues involving House employees
- with EC or PO on broad campaign reform
- with Rules on Rule 51

Judiciary (Jud)

- with EC on copyright issues in cable, digital audio, drug patents
- with EC on telecommunications regulation; antitrust; insurance regulation (McCarran Ferguson)
- with PW on certain interstate compacts

Merchant Marine (MM)

- with NR on outer continental shelf, endangered species, Alaska; oil exploration
- with PW on clean water, ocean dumping, oil spill, wetlands, coastal zone management; intermodal transportation
- with EC, AG, PW, ST on EPA
- with NR and FA deep seabed mining

Natural Resources (NR)-

- with EL or EC on Indian issues
- with Agri on forests
- with MMF on OCS, public domain wildlife refuges

Post Office and Civil Service (PO)

- with Jud on judicial branch salaries
- with HA on legislative branch salaries
- with others on new departmental positions

Public Works and Transportation (PW)

- with MM on clean water, ocean dumping, oil spill, wetlands, intermodal transportation

with EC on maglev, commercial vehicle safety, Superfund
with NR on Kennedy Center

Rules

bills with expedited procedures
with GO on budget process
with HA on Rule 51

Science, Space and Technology (ST)

with EL on science education and scholarships, technical
training, etc
with EC on commercialization of research and development
with EC and NR on Dept of Energy
with FA and MMF on antarctica
with Jud on antitrust protection for r&d businesses

Small Business (SB)

with AS and GO on contracting setasides (and other com-
mittees on agency specific basis)

Veterans Affairs (VA)

with AS on educational benefits

Ways and Means (WM)

with EC on health and domestic content
with EL on ERISA, welfare
with BF on public debt management, issuance of notes
with BF, MMF, NR, PW and others on fees and assessments
(revenue)

STATEMENT OF LLOYD N. CUTLER
BEFORE THE JOINT COMMITTEE ON THE
ORGANIZATION OF CONGRESS
MAY 18, 1993

I appear today concerning Senate Rule XXII's requirement that a supermajority vote is needed to cut off debate on a pending bill or motion to amend the rules. I submit that this supermajority requirement is unconstitutional. If I can persuade you that the constitutional issue is a substantial one, I also submit that the Senate has a judicial duty to consider and decide this question. If a majority of the Senate agree the supermajority requirements are unconstitutional, this majority can and should amend the rule so that a majority vote is sufficient to cut off debate.

As you may know, I advanced this argument in an op ed article in *The Washington Post* for April 19. This in turn produced opposing articles from George Will (April 25) and Senator Howard H. Baker, Jr. (April 27), a further reply by me (May 3) and a summing-up by Norman Ornstein (May 11) saying we had all missed the point. Copies of these articles are attached to my statement.

THE CONSTITUTIONAL ARGUMENT AGAINST RULE XXII

Let me begin by summarizing the main points of my contention that the supermajority provisions of Rule XXII are unconstitutional:

1. Of course, Article I, Section 5, of the Constitution states that "each House may determine the Rules of its Proceedings." But this cannot mean that either house can adopt a rule which violates an express or implied provision of the Constitution, for example the provision, also contained in Article I, Section 5, that "a majority of each [House] shall constitute a Quorum to do Business," or any of the other specific rules for House or Senate proceedings that are also expressly stated in Section 5.

2. When the Philadelphia Convention approved the provision that "a majority of each [House] shall constitute a Quorum to do Business," it did so after expressly rejecting proposals for a higher quorum. James Madison explained the reason as follows: "In all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would be no longer the majority that would rule: the power would be transferred to the minority." *The Federalist Papers*, No. 58.

3. Doing "Business" clearly covers any action that requires a vote. A vote is required to adopt rules or to pass a cloture motion to cut off debate. For the Senate to adopt a rule requiring the affirmative vote of 60 Senators to pass such a motion clearly violates the Quorum clause of

the Constitution. It means that a supermajority of at least 61 Senators (including the Senator who is filibustering) must be present as the "Quorum" to do the "Business" of voting on the cloture motion, and that 60 of them must be present to vote for cloture.

4. Other provisions of the Constitution plainly imply that the affirmative vote of a majority of the Senators present is sufficient to pass a bill, to approve a motion (such as a motion for cloture) or to adopt a rule. There are five expressly enumerated cases in the original Constitution where the text itself requires a two-thirds vote: the Senate's advice and consent to a treaty, the Senate's guilty verdict on impeachments, either house expelling a member, both houses overriding a presidential veto, and both houses proposing a constitutional amendment. In all other cases, according to the Supreme Court's decision in *United States v. Ballin*, it is "the general rule of all parliamentary bodies" that "when a majority is present, the act of a majority of the quorum is the act of the body. This has been the rule for all time, except so far as in any given case, the terms of the organic act under which the body is assembled have prescribed specific limitations." 144 U.S. 1,6 (1892).
5. Another powerful precedent for such a reading is the Supreme Court's holding in *Powell v. McCormack*. 395 U.S. 486 (1969) -- that the House of Representatives, despite its express power to "be the Judge of the...

Qualifications of its own Members", could not add to the three standing qualifications for election to that chamber (age, citizenship and residence) specified in the Constitution. Under this principle, the Senate could not constitutionally adopt a rule that its vote to advise and consent to presidential appointments, or to cut off debate on a pending bill or motion, requires a two-thirds or any other super-majority, when the Constitution itself does not so specify.

6. Article I, Section 3 provides another strong indication that only a majority vote is required for all but the constitutionally specified supermajority cases. It states that the Vice President shall preside over the Senate, "but shall have no Vote, unless they be equally divided." According to Hamilton, the Vice President was given a tie-breaking Senate vote "to secure at all times the possibility of a definitive resolution of that body." The Federalist Papers, No. 68. Surely the Senate's power to determine the rules of its proceedings does not allow it to require that all bills must pass by a two-thirds vote or by a margin of at least two--thus disabling the Vice President from exercising his constitutional power to break a tie. The same applies to the provisions of Rule XXII that motions to cut off debate require a supermajority of 60 (in the case of a bill) or two-thirds (in the case of a motion to amend a rule).

7. This principle of majority rule is not, as George Will suggests, limited to votes that have a "consequence beyond each house, such as passing legislation or confirming executive or judicial nominees." It is plain as the nose on Pinocchio's face that when a Senate rule requires a large super-majority to cut off debate, that rule does have a consequence beyond the Senate. A rule that can and does block the majority of the Senate, the majority of the House and the President from enacting and signing an important bill into law certainly has a consequence beyond the Senate Chamber. The same is true of a treaty that is not ratified, or a nominee for the Supreme Court or the Cabinet who is not confirmed because 60 votes cannot be found to break a filibuster.

8. Senator Baker concedes that it would be unconstitutional to require more than a majority vote to pass a bill or amend a rule. But he draws a distinction between passing bills and amending rules, on the one hand, and motions to cut off debate, for which Rule XXII requires a supermajority vote. Yet surely the two have the same effect, as we have learned every time the Senate has considered a change in Rule XXII. Such attempts were defeated by filibusters in 1961, 1963, 1967, 1969 and 1971, before cloture was finally achieved to cut off debate on the modest amendments made in 1975 (60 votes to cut off debate on all

business except amending the rules, for which the two-thirds requirement still continues).

Senator Baker's argument proves too much. If the Senate can constitutionally require a super-majority vote to cut off debate on a motion to amend its rules, it can constitutionally require unanimous consent to cut off debate on this or any other pending matter, as it did from 1806 to 1917. That would mean that any minority, down to a single Senator, could constitutionally prevent the Senate from doing business. It would make a mockery out of the express constitutional provision that a simple majority is sufficient for a quorum, and the implied provision — which Senator Baker concedes — that a mere majority is constitutionally sufficient to pass any measure, including an amendment of the rules. It would mean — contrary to Madison's account of the framers' intentions — that the minority would prevail.

9. Finally, George Will argues that the "generation that wrote and ratified the Constitution . . . set the Senate's permissive tradition regarding extended debate". But that is historically wrong. Rule 10 of the Continental Congress, following the precedent of the English Parliament and Jefferson's *Manual of Parliamentary Practice*, allowed the motion for "the previous question", under which debate could be cut off by a simple majority. So did Sections 8 and 9 of the rules

adopted by the first Senate in 1789. The motion for the previous question was not eliminated from the Senate rules until 17 years later, in 1806. The generation that wrote and ratified the Constitution expressly allowed a simple legislative majority to cut off debate, and it did so on at least two occasions before 1806.¹⁷ Perhaps for this reason, Senate filibusters were extremely rare in the first two decades of the republic.

THE DUTY OF THE SENATE TO RESOLVE THE CONSTITUTIONAL ISSUE

The Senate, of course, has judicial as well as legislative functions. It has the sole power to try all impeachments, and to judge the elections and qualifications of its own members. The Senate also has the duty, at least in the first instance, to judge the constitutionality of its own rules, and to annul or amend any rule that it judges to be unconstitutional. Senator Baker believes that the Supreme Court would accept and decide a case seeking to resolve the constitutional issue, and I hope he turns out to be correct. But apart from questions of standing, immunity from suit and whether the court would resolve a "political question" arising within the Legislative Branch, I do not see how the court could consider the issue unless the Senate had first resolved it one way or the other.

¹⁷ Senator Paul Douglas gave a historical account of these episodes in two addresses before the Senate. Congressional Record, May 9, 1957, pp.6669-6686, and January 5, 1961, pp.241-247.

As I understand Senate rules and customs, this could be done any time that a cloture motion comes before the Senate. Any Senator could raise a point of order as to whether a supermajority vote in favor is required, as provided in Rule XXII, or whether a majority vote is sufficient because the supermajority requirements of Rule XXII are unconstitutional. The Vice President, in his capacity as the President of the Senate, could give an advisory opinion on this issue—as Vice Presidents Nixon (1957) and Humphrey (1969) did on a somewhat different constitutional aspect of cloture in 1957 and 1969. Following current Senate custom, the Vice President would then refer this issue to the floor to be resolved by majority vote, with the Vice President casting his constitutional tie-breaking vote if necessary.

Whether filibusters or the supermajority requirements of Rule XXII are desirable is beside the point. The question is whether these supermajority requirements are constitutional. I respectfully submit that this question should be considered and deemed substantial by the Senate members of this Joint Committee, with a recommendation that the issue be taken up and resolved by a majority vote on the Senate floor.

George F. Will

The Framers' Intent

The Republican filibuster against the Clinton "stimulus" package was a resounding educational success because it provoked liberal denunciation of the Senate's protection of the right of a minority to use extended debate to obstruct Senate action. At issue are two different stances toward government.

Is efficiency, understood as the ability to implement the majority's will quickly, the primary value in government? Or is the primary value caution born of anxiety about government power, caution that respects the right of an intense minority to put sand in the gears of government?

Lloyd Cutler is a liberal critic of Senate Rule XXII, which requires 60 votes to curtail debate by imposing cloture. He is a distinguished Washington lawyer, seasoned by public service (he was President Carter's counsel) that unfortunately did not inoculate him against the temptations of institutional tinkering. The tinkering he favors would facilitate the essence of the liberal agenda—more uninhibited government. For example, a decade ago he recommended various reforms to undermine what he called an "anomaly" and what the Framers considered the essence of the constitutional system—the separation of powers.

Cutler finds Rule XXII not only politically but also constitutionally objectionable.

Politically it aggravates, he believes, the disjunction between public expectations and institutional functioning. The public expects modern presidents to formulate policies and lead Congress into supporting them. Rule XXII complicates presidents' attempts to fulfill that expectation.

But the answer to this problem (which modern, hyperactive presidents aggravate) is to educate—re-educate, really—the public to have more judicious expectations regarding the presidential role. Presidents have limited powers; the primacy of Congress is an older, sounder tradition than presidential supremacy. And the Senate is not obligated

to jettison one of its defining characteristics, permissiveness regarding extended debate, in order to pander to the perception that the presidency is the sun around which all else in American government—even American life—orbits.

Cutler's argument for the unconstitutionality of Rule XXII is:

"The text of the Constitution plainly implies that each house must take all its decisions by majority

Democracy is not simple majoritarianism.

vote, except in the five expressly enumerated cases where the text itself requires a two-thirds vote; the Senate's advice and consent to a treaty, the Senate's guilty verdict on impeachments, either house expelling a member, both houses overriding a presidential veto and both houses proposing a constitutional amendment.

But the Constitution "implies" no such thing. Cutler's semantic sleight-of-hand is in the words "must take all its decisions." The Constitution provides only that, other than in the five cases, a simple majority vote shall decide the disposition by each house of business that has consequences beyond each house, such as passing legislation or confirming executive or judicial nominees. Procedural rules internal to each house are another matter. And the generation that wrote and ratified the Constitution—the generation whose actions are considered particularly illuminating concerning the meaning and spirit of the Constitution—set the Senate's permissive tradition regarding extended debate. There was something very like a filibuster in the First Congress.

Although the filibuster was often used by South-

erners against civil rights legislation, liberals have repeatedly used it. When in 1957 the Senate selected from its history five outstanding senators whose portraits adorn the Reception Room, one was Wisconsin's liberal Robert La Follette (the others were Webster, Clay, Calhoun and Taft). La Follette, one of the most aggressive filibusters, led, along with another liberal, Nebraska's George Norris, the 1917 filibuster against the arming of the U.S. merchant fleet, the filibuster that caused the Senate to adopt its first cloture rule.

Democracy is trivialized when reduced to simple majoritarianism—government by adding machine. A mature, nuanced democracy makes provision for respecting not mere numbers but also intensity of feeling. And ask yourself: Is there anything the nation has ever wanted, broadly and deeply, that a filibuster prevented the government from giving? Clinton's "stimulus" package would have passed if the country wanted it.

Cutler approvingly quotes Sen. Henry Cabot Lodge saying, in 1893, in opposition to the right to filibuster, that "to vote without debating is perilous, but to debate and never vote is imbecile." Cutler does not note that by 1903 Lodge, older and wiser, had changed his mind, saying he would "much rather take the chances of occasional obstruction than to put the Senate in the position where bills could be driven through under rules which may be absolutely necessary in a larger body like the House . . . but which are not necessary here."

Liberal critics of filibustering say, as they do about many good things, that it was fine long ago, in a slower, simpler age, but not now, when there is so much that government must do, immediately. Conservatives answer with words from one of Trollope's parliamentary novels: "The best carriage horses are those which can most steadily hold back against the coach as it trundles down the hill."

Norman Ornstein

Rule XXII (Cont'd): Everybody Missed the Point

The debate in The Post between Lloyd Cutler (op-ed, April 19, May 3) on side one and George Will (op-ed, April 25) and Howard Baker (op-ed, April, 27) on the other has been a fascinating seminar on the Senate's Rule XXII allowing filibusters. Cutler rails against them and asserts they are unconstitutional; Will and Baker defend them as an essential component of a republican form of democracy.

Both sides miss the relevant point. The issue is not really *whether* the filibuster but *whether* the filibuster. Practically speaking the Supreme Court is not going to touch the issue of the constitutionality of a rule that has been in existence and used for many decades. We are stuck with the filibuster, like it or not. But we are not necessarily stuck with this filibuster. The real issue is whether and how we can change the rule and the practice to make it both effective and meaningful as a part of deliberative democracy.

Many Americans, to be sure, associate the filibuster with southern conservatives like Theodore Tilton blocking civil rights bills for a generation. But there was a time when the filibuster represented drama—bringing the Senate to a halt so that an intensely felt viewpoint, even if a minority one, could be heard—and listened to—by everybody. If some of the debate itself might be irrelevant, the issue in question would receive a focus and clarity that were the essence of a deliberative process.

For many Americans, that kind of filibuster was typified by the movie "Mr. Smith Goes to Washington." Jimmy Stewart, playing Sen. Jefferson Smith, stood up on the pre-Rule XXII Senate floor, where any one individual could block action as long as he

could stand there and talk, and did just that on a point of honor and integrity until he collapsed from physical exhaustion. It was noble and dramatic.

But that kind of filibuster is gone. In the early 1960s, over frustration with lengthy civil rights delays, Majority Leader Mike Mansfield moved to a "two-track" system of filibusters, where for many issues, a filibuster could be announced and carried out but other key business moved along on a separate track. No more all-night sessions, with senators sleeping on coats off the Senate floor, or waiting to see if Strom Thurmond could break the record and hold the floor for a full 24 hours (he did). Instead, a filibuster would simply mean that two-thirds of senators present and voting would have to vote for cloture to break the logjam on a bill and move ahead.

The "two-track" system removed the drama and destroyed the positive element of the filibuster. No more a tactic reserved for the most important of issues, requiring the most extreme of personal sacrifices, to draw a line in the dust for the nation. Instead, simply raising the bar from 50 to the current 60 votes. Call it the filibummer.

This New Age filibuster now is invoked frequently and threatened regularly by individual senators to gain leverage and bargaining power. The norms of the Senate are so lax that no one suffers vilification or even criticism for doing so. The relevance of the Senate as a great deliberative body is lost. Deliberation is a joke.

The solution? First bring back the old-style filibuster for important issues. If it is important enough to delay, it is important enough to require senators to stay all night, and through weekends, with an extremely high personal discomfort level, to make their point. Culture

will come a lot easier if the alternative is another few nights on a narrow cot in the hallway. And the function of the Senate, to deliberate and to dramatize the nation when sharp differences exist on meaningful issues, would be greatly improved. This step does not require rules changes—it can be implemented by the majority leader.

But rules changes are also desirable. There are too many opportunities to filibuster now, both before a bill is actually up for consideration, during consideration and again at the end of consideration. First, the Senate should outlaw filibusters on the motion to proceed to consideration of a measure.

Second, the Senate should in fact create two classes of filibusters to accommodate the current demands of members. Class I filibusters would be the Mr. Smith variety, under regular rules and procedures, with 60 votes required to bring cloture. Class II would operate like current filibusters. But no single senator could begin a Class II filibuster just by announcing it. It would require ten signatures by senators on a petition. And if the first cloture vote would take 60 votes to end the debate, the second would require only 55, and the third, a simple majority.

These changes would expedite business in the Senate, while improving real debate and deliberation and restoring a positive function to the filibuster. Let's forget the theoretical question of whether there should be a filibuster at all—and do something positive about the problem.

The writer is a resident scholar at the American Enterprise Institute for Public Policy Research.

Howard H. Baker Jr.

Rule XXII: Don't Kill It!

Debates about the U.S. Senate's rules of debate [The Way to Kill Senate Rule XXII, op-ed, April 19] rather quickly descend—or rise, depending on one's perspective—to a level of arcane which only a dedicated parliamentarian could love.

But I ask the reader to bear with me, because of cherished constitutional principle and billions of our tax dollars are at risk if the Senate should heed my friend Lloyd Cutler's recent call for the abolition of Rule XXII.

Rule XXII, for the heretofore blissfully uninitiated, is the Senate rule which establishes the terms for cutting off debate on a particular matter when enough senators decide they've heard enough.

The question at hand, of course, is the definition of "enough." The Senate's rules currently say that three-fifths of senators duly chosen and sworn (60 of 100) have to say "enough" before debate can be cut off (or, in the more civilized parlance of the Senate, before cloture may be invoked).

The rule used to be that two-thirds of senators present and voting had to vote for cloture, but the three-fifths majority requirement was adopted in 1975, and between 1806 and 1917 there was no rule of the Senate limiting debate at all.

Mr. Cutler now insists that 60 senators is too many, that a simple majority should be enough, that indeed it is *unconstitutional* for the Senate to require super-majority votes except where the Constitution itself calls for them.

(Two-thirds majorities are required in the advice and consent to treaties, the ratification of constitutional amendments, the overriding of presidential vetoes, the expulsion of a senator and the impeachment of federal officers.)

He also insists that changing the rule itself requires too many senators to vote in favor, that "Rule XXII and the other Senate rules can be changed only by the vote of two-thirds of the senators present."

Mr. Cutler comes to these conclusions, of course, only days after a determined Republican minority in the Senate mounted a successful filibuster against President Clinton's emergency economic stimulus package.

Gridlock, say Messrs. Cutler and Clinton. Enough.

Those are the politics. These are the facts.

■ A simple majority of senators can change any rule they wish to change, including Rule XXII. Rodrick's Senate Procedure, the parliamentary bible of the world's greatest

deliberative body, states on page 1217 that "it takes only a majority vote to amend the rules."

■ On votes for or against final passage of any measure that comes before the Senate, except treaties and the rest as specified by the Constitution, a simple majority carries the vote.

But the Senate is clearly empowered to establish its own rules for debate, including super-majority cloture, prior to voting on final passage. Article I, Section 5 of the Constitution specifically allows each house of Congress to "determine the Rules of its Proceedings."

Thus may the Senate empower a very small subset of

Taking Exception

senators—a standing committee, for example—to examine legislative proposals in detail and to report them, or not, for the consideration of the full Senate.

Thus, the Senate may establish rules, including rules requiring super-majorities for cloture, points of order or other procedural purposes prior to votes on final passage.

■ The Senate has the power to declare its own rules unconstitutional. It has been invited to do just that several times with respect to Rule 22, and it has always affirmed the constitutionality of that rule.

We should be careful here not to casually conclude, as Mr. Cutler does, that the Supreme Court would, if asked to review the constitutionality of the cloture rule, declare the matter a political question and do nothing. There is plenty of precedent for the court to review actions of Congress. The first such precedent was *Marbury v. Madison* in 1803. Cutler proposes to stifle enough pillars of democracy without stifling that one.

In Sen. Robert Byrd's monumental "History of the United States Senate," Byrd recites many useful precedents during which the Senate affirmed super-majority cloture, each time while under Democratic control. Indeed, at various times while under Democratic control, indeed, at various times Democratic Senate majority leaders such as Lyndon Johnson and Mike Mansfield opposed efforts to do away with the super-majority cloture requirement.

Goodwold, the section on cloture in his Senate history, Sen. Byrd addresses the use of cloture as a mechanism to balance individual rights and the prerogative of the Senate

to conduct its business. He writes that "the current cloture rule is the product of decades of trial and experience aimed at curbing the extremes in the use of filibusters to block Senate action."

"It has discouraged—though not eliminated—past-cloture filibusters and has also provided a more effective tool in overcoming all but the most determined filibusters carried on by a sizable minority."

"Its effectiveness is asked greatly by the strengthening precedents that have been established over the past century, some of which antedate the first cloture rule in 1917."

While appreciating this conclusion, I must add that Cutler's proposal would do a good deal more than overturn a few dusty precedents.

Dung away with super-majority votes would, among other things, viceratize the only thing that passes for fiscal discipline in this city—the Budget Act, which is built on the use of 60-vote super-majorities.

And even more important, it would topple one of the pillars of Americans democracy: the protection of minority rights from majority rule.

The Senate is the only body in the federal government where these minority rights are fully and specifically protected. It was designed for that purpose by America's Founders, who saw it, in Jefferson's words, as "a saucer into which the nation's passions may be poured to cool."

One thinks, for example, of President Truman's angry attempt to draft striking railroad workers into the Army in 1946—a clear issue of power denied by a successful Senate filibuster.

Even presidents make mistakes, and depending on their political strength at any given time, they may bring congressional majorities along with them down the wrong road.

The House of Representatives has no provision for the protection of minority rights. From its inception, it has been a majoritarian institution. The Senate is different, as was intended by the Constitution's Framers. Rule XXII protects not only the rights of the minority, but the deliberative process of the Senate itself.

The writer, a Republican senator from Tennessee from 1966 to 1984, was majority leader from 1981 to 1984.

Washington Post, April 19, 1993

Lloyd Cutler

The Way to Kill Senate Rule XXII

Senate Rule XXII provides that the only way to cut off debate on a pending bill is by a motion for which 60 of the 100 senators vote aye. It also provides that Rule XXII and the other Senate Rules can be changed only by the vote of two-thirds of the senators present. When the minority party is united, 60 to 67 votes are very difficult to obtain, as the 43 Senate Republicans proved again earlier this month.

The pros and cons of allowing unlimited Senate debate are themselves debatable. A century ago, as described in Robert Byrd's masterful history of the Senate, Sen. Henry Cabot Lodge opposed it, saying that to "vote without debating is perilous, but to debate and never vote is unbearable." Yet viewed from any point along the political spectrum, the right to filibuster has helped to block bad laws as well as good ones. And with the Senate split 57 to 43, the chances of getting two-thirds of the senators present to modify Rule XXII so as to permit a mere majority to cut off debate are virtually nil.

But there may be another way to attack Rule XXII. A strong argument can be made that its requirements of 60 votes to cut off debate and a two-thirds vote to amend the rules are both unconstitutional. While Article I of the Constitution allows each house to "determine the Rules of its Proceedings," this power cannot be used to subvert other express or implied provisions of the Constitution itself.

The text of the Constitution plainly implies that each house must take all its decisions by majority vote, except in the five expressly enumerated cases where the text itself requires a two-thirds vote: the Senate's advice and consent to a treaty, the Senate's guilty verdict on impeachments, either house expelling a member, both houses overriding a presidential veto and both houses proposing a constitutional amendment.

A powerful precedent for such a reading is the Supreme Court's holding in *Powell v. McCormack*—that the House of Representatives, despite its express power to "be the Judge of the . . . Qualifications of its own Members," could not add to the three standing qualifications for election to that chamber specified in the Constitution. Under this principle, the Senate could not constitutionally adopt a rule that its advice and consent to presidential appointments requires a two-thirds vote or any other supermajority, when the Constitution itself does not so specify.

Except in the five specified cases, the Framers implicitly decided that a minority of either house should not be able to block the majority from acting. That is why they adopted an express requirement that a majority of either house is sufficient for a quorum and rejected proposals for a higher quorum. Madison explained their reasons: "In all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would be no longer the majority that would rule: the power would be transferred to the minority." The *Federalist Papers*, No. 58.

Article I, Section 3 provides another indication that only a majority vote is

How Democrats can change the rule that mandates a super-majority for cloture.

intended for all but the constitutionally specified cases. It states that the vice president shall preside over the Senate, "but shall have no Vote, unless they be equally divided." According to Hamilton, the vice president was given a tie-breaking Senate vote "to secure at all times the possibility of a definitive resolution of that body." (The *Federalist Papers*, No. 68.) Surely the Senate's power to determine the rules of its proceedings would not allow it to require that all bills must pass by a two-thirds vote or by a margin of at least two, thus disabling the vice president from exercising his constitutional power to break a tie.

Equally objectionable under Article I Section 3 is Rule XXII's built-in requirement that it and other Senate rules cannot be amended by majority vote, but only when two-thirds of the senators present vote "aye." The Constitution specifies no exception to the vice president's constitutional right to cast a tie-breaking vote, which necessarily includes votes on motions to amend the Senate's own rules. Since

Rule XXII denies this power to the vice president by requiring that any amendment requires an affirmative vote of two-thirds, it is plainly unconstitutional.

If the vice president, the majority leader, and at least 49 other Senate Democrats want to challenge the constitutionality of Rule XXII on the grounds advanced above, there is a potential scenario for doing it. The Senate Rules Committee, controlled by Democrats, would approve an amendment of Rule XXII permitting a majority to cut off debate after some reasonable period. When the amendment comes before the Senate, the Democrats would need to muster only 51 favorable votes (or 50 plus the vice president's vote). A Democratic senator would raise a point of order that this number is sufficient either to pass the amendment or to cut off debate against it, because the super-majority requirements of Rule XXII are unconstitutional. The vice president would support this view, backed up by an opinion of the attorney general. Following Senate custom on constitutional points, the

vice president would refer the question to a vote of the entire Senate, where the same 51 or more votes, or 50 plus the vice president's vote, would sustain it. The motion to amend Rule XXII would therefore pass.

The Republicans (and George Will) would charge that the pillars of the Republic were being torn asunder, but they would be on weak constitutional ground. They could take the issue to the Supreme Court, but at least in this lawyer's view, the odds would be against them. The court would rule either that the super-majority requirements of Rule XXII are indeed unconstitutional or that the Senate's majority vote to sustain the constitutional point of order presents a "political question" with which the courts would not interfere.

If the administration and the Senate Democrats prepare to play this constitutional card, their bargaining position in the upcoming negotiations on the size and shape of the economic stimulus package would be stronger. If the negotiations fail and the card is played, the objectionable features of Rule XXII could be swept into the dustbin of history.

The writer, a Washington lawyer, served as counsel to President Jimmy Carter.

Lloyd Cutler

On Killing Senate Rule XXII (Cont'd)

In my op-ed of April 19, in which I argued that the Senate rule requiring a super-majority vote to cut off debate is unconstitutional, I tempted the gods by suggesting that George Will might disagree. In his own column the following Sunday ("The Framers' Intent," op-ed, April 25), Will hurled down his lightning bolts from Mount Olympus. On Tuesday (op-ed, April 27) another Olympian, Howard Baker, hurled a few of his own. I think they both missed.

Will says that the "generation that wrote and ratified the Constitution . . . set the Senate's permissive tradition regarding extended debate." But that is historically wrong. Rule 10 of the Continental Congress, following the precedent of the English Parliament and Jefferson's Manual of Parliamentary Practice, allowed the motion for "the previous question," under which debate could be cut off by a simple majority. So did Sections 8 and 9 of the rules adopted by the first Senate in 1789. The motion for the previous question was not eliminated from the Senate rules until 17 years later, in 1806.

The generation that wrote and ratified the Constitution expressly allowed a simple legislative majority to cut off debate. Perhaps for this reason, Senate filibusters were extremely rare in the first two decades of the republic.

Will dismisses as "semantic sleight of hand" my contention that the Constitution implicitly requires a simple majority vote on all matters other than those where the text requires a super-majority of two-thirds. But in *United States v. Ballin*, decided in 1892, the Supreme Court held it to be "the venerable rule of all parliamentary bodies, that 'when a majority is present, the act of a majority of the quorum is the act of the body.' This has been the rule for all time, except so far as in any given case, the terms of the organic act under which the body is assembled have prescribed specific limitations."

This principle is not, as Will suggests, limited to votes that have a "consequence beyond each house, such as passing legislation or confirming executive or judicial nominees." The Constitution itself provides that "a majority of each house" shall constitute a quorum to do business. When the Senate adopts binding rules to govern its proceedings or takes up a motion to cut off debate on any matter before it, it is certainly doing "business."

In any event, it is plain as the nose on Pinocchio's face that when a Senate rule requires a large super-majority to cut off debate, that rule does have a consequence beyond the Senate. A rule that can and does block the majority of the Senate, the majority of the House and the president from enacting and signing an important bill into law certainly has a consequence beyond the Senate chamber. The same is true of a treaty that is not ratified, or a nominee for the Supreme Court or the Cabinet who is not confirmed because 60 votes cannot be found to break a filibuster.

Will also asks: "Is there anything the nation has ever wanted, broadly and deeply, that a filibuster prevented the government from giving?" Yes, George, there is. Here are a few examples.

- The anti-lynch bills of 1922, 1935, 1937 and 1938.
- The Constitutional amendment abolishing the poll tax, for 22 years (1942-1964).
- The fair employment practice bills, for 18 years (1946-1964).

■ The Genocide Treaty, for 12 years (1974-1986).

■ Campaign financing reform, for five years (1967-1971).

And the Civil Rights Act of 1964 was filibustered for 74 Senate days (93 calendar days) before the necessary super-majority of two-thirds for cloture could be forged.

Will also says that "democracy is [ruined] when reduced to simple majoritarianism." Will's favorite constitutional authority, James Madison, disagreed. He supported the Philadelphia Convention's decision that a majority of each house would constitute a quorum to do business and its rejection of proposals for a super-majority requirement. He argued that under a super-majority requirement the minority would rule, and thus the "fundamental principle of free government would be reversed." *The Federalist Papers*, No. 68.

Unlike Will, Howard Baker concedes that all Senate business, including the adoption of its own rules, must be done by majority vote, excepting only those cases where the Constitution expressly requires two-thirds. And he correctly points out that Rule XXII does not require a two-thirds vote to amend an existing rule; instead, as I should have made clear, it requires a two-thirds vote to cut off debate on a motion to amend an existing rule.

But surely the two have the same effect, as we have learned every time the Senate has considered a change in Rule XXII. Such attempts were defeated by filibusters in 1961, 1963, 1967, 1969 and 1971, before cloture was finally

achieved to cut off debate on the most amendments made in 1975 (60 votes to cut off debate on all business except amending the rules, for which the two-thirds requirement still continues).

Senator Baker's argument proves too much. If the Senate can constitutionally require a super-majority vote to cut off debate on a motion to amend its rules, it can constitutionally require unanimous consent to cut off debate on this or any other pending matter, as it did from 1806 to 1917. That would mean that any minority, down to a simple Senator, could constitutionally prevent the Senate from doing business. It would make a mockery out of the express constitutional provision that a simple majority is sufficient for a quorum, and the implied provision—which Senator Baker concedes—that a mere majority is constitutionally sufficient to pass any measure, including an amendment of the rules. It would mean—contrary to Madison's account of the framers' intentions—that the minority would prevail.

Senator Baker devotes most of his piece to the merits of occasional filibusters and of requiring a super-majority to cut off debate. The issue is not whether a super-majority is desirable, but whether it is constitutional. That is the question that every conscientious Senator needs to face.

Senator Baker believes that the Supreme Court would accept and decide a case seeking to raise this issue. I hope he turns out to be correct. But in addition to the question of whether the courts would resolve a "political question" arising within the legislative

branch, there are technical problems of standing and jurisdiction to be solved.

Judge Harold Greene has recently accepted and decided the merits of a fairly similar case, in which 14 Republican House Members sued the Clerk of the House to challenge the constitutionality of a new House rule allowing D.C. Delegate Eleanor Holmes Norton and four other delegates to vote in the House Committee of the Whole. This decision is now on appeal. If Judge Greene's upholding, and if a way is found to bring a motion raising the constitutionality of Rule XXII to an up or down majority vote on the Senate floor, as suggested in my op-ed of April 19, senators on the losing side of the vote might be able to sue the secretary of the Senate on the same theory.

But in the first instance, and perhaps the last, the constitutional issue is one for the senators and the vice president, as presiding officer, to decide. They should get the best advice they can from the attorney general, the counsel to the Senate and the many constitutional scholars and lawyers who will gladly join the fray. The Constitution makes senators the judges of impeachments and the qualifications of their own members. They also have the high judicial duty of addressing and deciding the constitutionality of their own rules.

The writer, a Washington lawyer, served as counsel to President Jimmy Carter.

Washington Post May 3, 1993 p. A19

**STATEMENT TO THE JOINT COMMITTEE
ON CONGRESSIONAL OPERATIONS**

Presented by Hyde H. Murray

May 18, 1993

Thank you, Mr. Chairman, for this opportunity to contribute to the noble effort of your committee to boost, not bash the United States Congress.

As I began to compose my thoughts for this occasion, I pondered what theme would be the most relevant and useful to you.

I turned to the ancient Greeks for some answers.

I starting with Socrates himself, whom the Oracle of Delphi called the wisest of all the Greeks, because "he knew he knew not".

Assuming that knowing not was not enough, I pondered another Greek maxim that "the gods save their greatest disappointment for those who get what they want".

No, I said to myself, I'll stick with something more compatible with the central core of the U.S. Congress: Democracy, our golden gift from Lycurgus and Solon, two of the great law givers who live in the discs adorning the walls of the House Chamber.

It was this miracle of human relations....democracy.... that the founders of our form of government molded into a democratic republic. And for two centuries Congress has regularly used this miracle as we have learned that four usually beats three in the House, five sometimes beats three in the Senate, six beats three

from time to time in each body....and one beats a million when it comes to the Bill of Rights.

As I understand the sequence of witnesses, today's discussion will cover floor deliberations and scheduling. In order to achieve greater participation and more impact on the ultimate work products of the two plenary bodies of the Congress, I would like to share with you three suggestions which hopefully will help enhance public appreciation and affection for our democratic process under which the winners respect objections of the losers and the minority respects the will of the majority.

My three suggestion are to:

1. Improve comity and respect.
2. Strengthen your staff.
3. Adopt the emerging technology.

Comity and Respect

You need not be reminded of the current Congress Bashing Syndrome. You hear it every day from the media, from the public, from academia, and even from within the Congress.

My basic thesis for your consideration, however, is this: Congress is not sick, but it has been wounded....and a lot of those wounds have been self-inflicted. Yet, the fundamental elemental Constitutional model of a separate and distinct

legislature, impervious to coercion by a strong executive or by selfish private interests is still intact and, while there exists a cottage industry of virulent and unloving critics finding fault with some of the people and some of the practices that make up the Congress, there has yet to be shown adequate evidence of such wide-spread corruption or abuse that would justify dismantling the bedrock doctrines of separation of power and speech or debate that underpin the independence of Congress in the Federal Trilogy.

Thomas Jefferson set the tone for tolerance and reason in political debate when he and his followers were hounded and, in some cases, imprisoned for the then heinous crime of criticizing the government of John Adams and the Federalists.

The '90's....the 1790's were the days of the Alien and Sedition Act. Author Lally Weymouth, wrote in "Thomas Jefferson, the Man, His Word, His Influence", the following about those trying times:

"The election of 1800 was unusually bitter. Around the person of Jefferson the Republicans achieved a unity of action and feeling not known before. He was presented to the public as the "man of the people", while Adams was draped in the hideous garments of kings and nobles. The Federalists, sharply divided among themselves, united in sounding the tocsin about Jefferson, vilifying him as a Jacobin incendiary, infidel, visionary, demagogue, and the enemy of Washington, the Constitution and the

Union. For ten years Federalists pundits had been fashioning this ugly image of Jefferson. Now it became a diabolical obsession. Under him, surely, the churches would be destroyed and the nation laid waste by revolutionary fanaticism imported from France. "Murder, robbery, rape, adultery, and incest will be openly taught and practiced," wrote one pamphleteer, "the air will be rent with the cries of distress, and the soil will be soaked with blood, and the nation black with crimes." Jefferson, while personally hurt by the smear campaign, nursed his wounds in private. He had long since learned that for every libel put down another rose in its place; besides, he was committed philosophically to the wildest latitude of public discussion on the principle he would state in his Inaugural Address: "that error of opinion may be tolerated where reason is left free to combat it."

Two hundred and two years later, the Hon. George Meader (retired) of Michigan, speaking at the Former Members Meeting held January 25, 1992, put it this way:

"The United States Congress consists of 535 people -- just a little community -- but in the words of Daniel Webster, "There are those of us who love her."

This little community has in its hands the welfare of

hundreds of millions of Americans, living and unborn. Its decisions also affect billions, living and unborn, who populate our planet.

To exercise this awesome power, to discharge this apocalyptic trust, this little community needs all the help, human and divine, it can get. It needs freedom and flexibility in its operations. Restrictions, limitations, onerous procedures, however meritorious, cannot help but impede and obstruct its power functioning and inhibit judicious study and wise decisions.

Like Gulliver, multitudinous silver threads of congressional reform may immobilize the giant.

If a legislator can be trusted with a vote to declare war, should he not be trusted in the selection and use of assistants?"

Of course, the rough and tumble of politics will always be part of the price we all pay for freedom. "No heat, no kitchen", to paraphrase President Harry Truman.

But somewhere in the current dialogue about and within the Congress, there should be an attempt to inspire a greater respect for the institutional structure and the mere human beings who for the most part are trying their best to make it work.

Possibly, the sage advice of former Speaker John McCormick could be useful. A more modern version of Thomas Jefferson's observation appeared to me one day when I heard the story about Speaker John McCormack who was asked how he felt about a particularly irritating colleague.

He said, "I hold him in high regard."

His questioner questioned him again, "How can you say that, isn't he a total jerk?"

The Speaker is said to have replied: "I hold all Members of the House in high regard....some I hold in maximum high regard, some in regular high regard," and then placing his right thumb and index finger very closely together he went on, "and some I hold in minimum high regard...I hold the gentleman of whom you speak in minimum high regard."

When all is said and done, however, respect is not ordered, it isn't enacted, it isn't purchased....it is earned.

One way to earn the public's respect for the institution is to do a good job...a good job in the office, in the committees and on the Floor. That's the charge of every member and you must be doing something right because most of you get re-elected by your constituents.

Yet, there may be a new way to help the public understand why personal courtesy, comity and mutual respect are established and enforced. Perhaps a

series of educational lectures and discussions using Special Orders in the House and reserved debate time in the Senate would be helpful.

These lectures and discussions could be coordinated with C-Span, which has the capacity to attract historians, authors, and learned commentators to help the public understand more clearly the reasons for congressional decorum and the doctrines of separation of power and speech or debate. Other bi-partisan sessions on parliamentary procedure, American History, Congressional humor, and non-governmental ways to promote private charity could also be considered.

STRENGTHEN YOUR STAFF

Congressional staff have also taken their share of bashing, again in some cases by Members of Congress. My experience as part of the House staff for 30 years is that Congressional staff are highly motivated, work very hard and are loyal to their employers, while at the same time living with constant uncertainty and lack of security.

That is why, Mr. Chairman, I hope your committee will recognize the value of a skilled and loyal staff for both the Majority and Minority. I hope, too, that you will support efforts to promote employees' wellness programs as part of a new and enlightened national health care system. Also, by encouraging more skill enhancement and advanced education and training for the Committee staffs, you will be directly improving the main work product of Congress: sound legislation.

It is, after all, in the several committees where most technical and legal expertise exists, both Members and Staff.

And it is in these committees where the persistence, the expertise, and the experience exists for Congress to do its best at investigating, legislating and educating.

And while modification, ratification or rejection of the work product of every committee is ultimately the prerogative of each House during the Floor debates, the legislative and appropriations committees should remain the "work horses of Congress".

Institutional education for the leadership staff, members staffs, and the support staffs should also be encouraged.

ADAPT EMERGING TECHNOLOGY

When Quarterback Frank Ryan, of the Cleveland Browns and the Washington Redskins, put together the electronic voting device in the House, a big change occurred in the way the House does its business. Making voting easier and quicker through electronic technology led to a rules change permitting for the first time recorded votes in the Committee of the Whole. This in turn, led to hundreds of more votes.

Professor Steve Smith of Minnesota will be one of your witnesses later, so I won't dwell on his book co-authored by Stan Bach of the Library of Congress,

other than to say, that in my opinion, technology more than any other factor has led to the House Minority's current level of dissatisfaction and frustration about closed and semi-closed rules being used so frequently on major bills.

Whether this condition is an example of the law of unintended consequences or not, I hope you would recommend that a modern Congress will examine, evaluate and adopt many exciting new electronic educational and informational systems being developed.

For television alone there are many possibilities, not the least of which is wiring each committee to a special channel available to viewers throughout the nation. This gives the people power to know directly what's being said and by whom.

My old friend and former Senate staffer, Bill Taggart, has pointed out to me that electronic retrievals of bills, resolutions, committee reports, hearings, and witnesses' statements are now within the technological grasp of Congress. Again, the information age is here and the old ways of filtering news through paid intermediaries is becoming much less necessary. In establishing such a program, it seems highly practicable that a user fee system could be used to help finance its costs. Of course, the conventional availability of one free copy of Congressional instruments from the House and Senate Document Rooms should be retained.

SUMMARY

In summary, there are many ways and opportunities to beat up on the Congress which has proven to be a tough and resilient institution. The historical

fact is that Congressional criticism has been a national pastime since the founding of the Republic which was born in revolution, torn and healed by civil conflict, tested in two world wars, victorious over the earth's greatest tyranny and this planet's champion of freedom for two centuries.

With the challenges now facing the American people and her government, this is a time to build on the legacy of two centuries of service by some 11,000 Representatives and 3,000 Senators to boost Freedom back to her perch on the top of the Capitol dome and into the hearts of peoples everywhere.

MAY 18, 1993

TESTIMONY OF

WILLIAM F. HILDENBRAND

SECRETARY, UNITED STATES SENATE
1981-1985

Mr. Chairman and Members of the Committee: I appreciate the opportunity to appear before the Committee today and to discuss some possible changes in the way the Senate conducts its business on a day to day basis. The Committee has heard from scores of witnesses all the way from present Members to former Members; to Academicians; and to private citizens. All of them have proposed changes that they think would help the Senate operate more effectively and more efficiently. I am no different.

However, I will be brief and confine these remarks to just a few reforms that I feel would assist the Leadership in streamlining the Senate operation and bring some order out of chaos in scheduling legislation and Member's time in Committee and on the Floor.

1) COMMITTEE STRUCTURE: I support the proposal of the Senator from Kansas, Mrs. Kassebaum, in creating a committee structure that would permit authorizing and appropriating at the same time. The value of such a reform would be in the time saved on the floor by not having to debate the same issue twice which is almost the norm today.

2) COMMITTEE ASSIGNMENTS: It would be most helpful if the Leadership would enforce the present rule that permits Senators to serve on only two Class "A" committees. As the Majority Leader testified earlier, there are presently 30 committee assignments over the mandatory 200. As most members know, it is sometimes difficult to attend committee meetings when you serve on only two committees, let alone three or more.

3) MOTION TO PROCEED: If the Senate is to return to an efficient and deliberative body, it is essential that the rule permitting unlimited debate on a motion to proceed be changed. Members deserve to know exactly when a specific piece of legislation is going to be debated by the Senate. This will not sit well with the Minority, regardless of which political party is the minority, but if the quality of life in the Senate is going to get better, and if the Leadership is going to be able to operate the Senate efficiently, a change in this rule is imperative.

Finally, Mr. Chairman, a word about the Ethics Committee. I have discussed with the Majority Leader, and with you Mr. Chairman, the proposal that has been advanced to permit an outside committee of former members, judges, or whatever to sit as a committee. In the final analysis, Mr. Chairman, the Senate cannot avoid the responsibility of sitting in judgment of its Members as distasteful as that may be. For that reason, I suggested to the Leader, and now suggest to this Committee, that they consider creating an outside committee of former Members, jurists and public citizens to act as sort of a

Grand Jury to determine whether or not there is sufficient reason for the Ethics Committee to undertake the investigation of a Member. The recommendations of this committee would not necessarily have to be binding, but it would give the Committee some idea of whether it should or should not proceed.

Thank you, Mr. Chairman.

STATEMENT OF
THE HONORABLE JOHN JOSEPH MOAKLEY
CHAIRMAN
COMMITTEE ON RULES
U.S. HOUSE OF REPRESENTATIVES

before

THE JOINT COMMITTEE ON THE ORGANIZATION OF CONGRESS
MAY 20, 1993

Mr. Chairman, I would like to thank the Joint Committee for the opportunity to appear before you today to talk about committee and floor procedures in the U.S. House of Representatives. As Chairman of the House Rules Committee, I realize I am an obvious spokesperson for the procedures by which bills are considered in the House. I do not come before you today to blindly defend our current practices. Rather, I view this as a valuable and essential opportunity to take an objective, critical look at our rules and procedures and to comment on what areas might possibly be improved.

Before getting to specifics, I would like to briefly express my gratitude to the Joint Committee for the work it has done to date. I commend the Committee for both its diligence and the seriousness with which it has undertaken its work. Your's is not an easy task, I know. Change is always difficult, particularly when it is uncertain whether the proposed changes will actually improve the status quo. I can appreciate the enormity of your assignment and hope that my comments today assist you with your comprehensive evaluation of the Institution.

Reflecting upon the atmosphere in Congress of late, I must confess that I am almost relieved that we have reached this juncture -- it is time for us to confront our problems, either real or perceived, and resolve them one way or another. In my twenty-one years in Congress, I have never experienced partisan tensions as aggravated and sustained as they have been over the past couple of years. While a certain amount of sparring between the parties is unavoidable, healthy even, I believe we have far surpassed the level of disagreement that characterizes a healthy democracy.

I am most concerned with the element of distrust that seems to pervade our daily interactions. We cannot do our jobs well when we distrust those with whom we work. We were sent here to make sound, well-reasoned policy decisions on behalf of our constituents, our country and the world. I am deeply concerned that the public good is being compromised in the conflicts of our rival parties.

It is out of these concerns that I admit certain changes are needed. On the procedural front, I think I can recommend several improvements which will not only enhance the quality of deliberation in the House of Representatives, but will also lessen some of the partisan jealousies which arguably consume too much of our time and energy. As I have not yet talked with the Speaker about these ideas, I in no way wish to imply that my remarks today reflect the sentiments of the Leadership.

First, I would like to note the Democratic Leadership's recent efforts to allow for more open, inclusive debate. By inclusive I mean providing for greater participation by both the majority and the minority. The views of the minority are a vital component of the legislative process, and within reason, should be accommodated. I say within reason because underlying the legislative procedures of the House is the general principle that a determined majority of members should be able to work its will on the floor without undue delay by the minority. While House rules and procedures generally recognize the importance of permitting any minority, partisan or bi-partisan, to present its views and prepare alternatives, the rules do not enable that minority to filibuster or use other devices to prevent the majority from accomplishing its objectives in a timely manner.

I think everyone would agree that it is the prerogative of the majority party leadership to both set the legislative agenda and to provide for the orderly consideration of legislation in the House. And while the role of the Rules Committee is to try to facilitate the Leadership's legislative agenda, its power is not without limitation. The Rules Committee can only recommend special rules to the House -- it cannot **impose** its recommendations on the membership. It is for the House to decide, by majority vote, whether it is prepared to accept the ground rules, including any restrictions on amendments that the Committee proposes.

The Rules Committee structures its rules based not only on the views of its members, but also on its perception of what a majority-- 218 members-- of the House is prepared to support. Ultimately, the House agenda is subject to control by a voting majority. This majority is not static, nor is it strictly partisan. Rather it is continually shifting and must be constructed and reconstructed from one issue to the next.

Unfortunately, bare statistics do not always reflect the considerations behind the types of rules reported by my Committee. The first ten rules reported by the Rules Committee in the 103rd Congress were indeed by definition "restrictive", that is, providing certain limitations on the number or types of amendments that could be offered. But while my friends on the other side of the aisle suggest that their amendments were arbitrarily rejected by the Rules Committee, this simply isn't true.

Before condemning the Democratic Leadership as callous or insensitive to the ideas of the minority, one must examine the nature of the bills and the types of amendments offered. Interestingly, of the ten examples cited by the Republican Leadership Task Force on Deliberative Democracy as egregious examples of the Rules Committee unreasonably denying amendments

for floor consideration, the first five amendments were not even germane to the measures being considered. It is common knowledge that House rules and precedents require all amendments to be germane to the text they would amend. Therefore, I see nothing unreasonable about the Rules Committee's decision not to make these amendments in order. Moreover, another two amendments cited by the Task Force would have been subject to other points of order. In sum, seven of the ten amendments cited by the Task Force would not even have been made in order under an open rule.

As for the restrictive rules that the Rules Committee has reported to date, let me say this: the baseball season is only one month old -- just because the Tigers are now in the lead doesn't mean they're going to win the pennant. In other words, be patient. There is no rigid program governing the types of rules to be reported by the Rules Committee. Rather, each rule will be determined on a case by case basis.

As you know, the Rules Committee recently reported open rules on three bills -- nobody should be surprised when such contentious issues such as reconciliation and campaign finance are considered under structured rules-- but as the House moves further into its legislative season I anticipate more open rules being reported by my committee.

Another change I would recommend relates to the motion to recommit. The change would arguably strengthen the minority's ability to act as a constructive partner in the development of legislation. I endorse a modification of the plan proposed by Tom Mann and Norm Ornstein in one of their earlier reports to the Joint Committee.

I propose amending House Rule XVI, clause 4, so as to guarantee the minority a motion to recommit with instructions whenever a special order reported by the Rules Committee

precludes the minority from offering amendments in the Committee of the Whole. This right would be subject to a couple of conditions. First, the motion would be guaranteed only if offered at the specific direction of the Minority Leader or his designee. Second, upon receipt of the motion, the Speaker would have the power to postpone debate and votes on the motion and final passage for up to two hours.

I consider these conditions to be reasonable as they would allow the minority a vote on its position on major issues and at the same time allow the majority a reasonable amount of time within which to prepare its response to the minority's alternative. Theoretically, limiting control of the motion to recommit to the Minority Leader or his designee would ensure that the motion would be used in a serious, constructive manner. Members with fringe views would be unable to make frivolous motions.

A third change I would recommend involves clause 2(1)((5) and (6) of House Rule XI which respectively provide for a three day period within which members may file supplemental, additional or minority views to be included in a committee's report, and an additional three day period for members to review the committee report before the measure is considered by the House. In his recent statement before the Joint Committee, Mr. Solomon expressed concern that the opportunity for members to review committee reports was too often being waived due to scheduling considerations. Let me say I empathize with Mr. Solomon and hope that my plan alleviates some of his concerns.

My proposal tries to balance the legitimate need for flexibility in scheduling legislation for floor action with the important right of members to express their alternative views and to review committee reports prior to debating a measure on the House floor. I don't believe the rule

as it is presently written allows us to use our time efficiently. Presently, the three day period for filing views begins to toll the day immediately following the day on which a committee orders a measure reported and expires at midnight of the third day. Since presently there is no automatic authority for a committee to file immediately upon the expiration of this third day, it may be another day before the committee files its report, and yet another day before the report becomes available in the document room. Only then will the three day layover period for members' review of the report begin. Thus, more than two weeks may go by before a bill becomes available for floor consideration.

In the interest of both preserving this important right and using our time well I would recommend the following: tighten the way in which the three day period for filing views is calculated by starting the clock tolling immediately upon a committee's ordering of a bill reported. Often many valuable hours remain in a day on which a bill is ordered reported. Additionally, I would recommend giving committees automatic authority to file until midnight of the third day.

These changes arguably would achieve the dual goal of allowing for more efficient scheduling of legislation and insuring an adequate period for members to file and review views. While the Committee on Rules would still reserve its right to waive the three day layover requirement, I believe that if these changes were to be made the need for such waivers would be significantly reduced. In fact, I think it is safe to assert that had this proposal been in place earlier this Congress, none of the waivers of the three day layover period granted by my Committee would have been necessary.

My final recommendation is that the House, in some manner, implement the Oxford-

Union style debate program proposed by Norm Ornstein and Tom Mann. Such a program strikes me as a useful vehicle for conducting thoughtful, substantive, and balanced debate on important national issues. Unlike one-minutes or special orders which tend to be one-sided monologues free of contest or rebuttal, such a program would allow for a meaningful exchange of ideas between members and would serve as a valuable supplement to our regular debate time on major legislation.

In closing, I would like to add that I agree with the prevailing sentiment that procedural or mechanical changes alone will not cure the ailments of this Institution. Attitudinal change is as important an ingredient. I am encouraged by the progress that is already being made in this area and hope that we can sustain this spirit of cooperation throughout the 103rd Congress.

I again thank the members of the Joint Committee for this opportunity to testify before you today. I would be happy to answer any questions.

STATEMENT OF THE HON. DAVID DREIER

before the

JOINT COMMITTEE ON THE ORGANIZATION OF CONGRESS

May 20, 1993

-1-

Mr. Chairman, my colleagues on the committee, thank you for allowing me to address the Joint Committee in this rather unorthodox manner. It only underscores the seriousness with which I consider the matter of floor procedures and deliberation.

I am now serving in my second term on the House Rules Committee but, given the atmosphere of frustration this past year with restrictive rules, it seems more like my second decade. Let me say, however, that I thoroughly enjoy working on the committee and commend the leadership of my friend from New York, Mr. Solomon, the ranking Republican, and Chairman Joe Moakley, who I consider to be the best Chairman in the Congress.

The Chairman's testimony this morning was extremely helpful. He commands a great deal of respect both on and off the Rules Committee because of his fairness, decency and genuine desire to be as accommodating as possible. But Chairman Moakley's best efforts notwithstanding, words like fairness, decency, and accommodating don't describe how the Republicans -- and even many Democrats who are also disenfranchised by the Rules Committee -- are treated in the legislative process.

Since Chairman Moakley used a baseball analogy in his statement, I would like to use another. Imagine yourself as the manager of a baseball team that must play all of its games on the road, and the home team can change the rules with each game. Suppose your line-up is loaded with home-run hitters and the home team could simply move the fences back; or it's your ace pitcher's turn in the rotation and the home team can just declare him ineligible to play. Then your complaints are dismissed by the home team as "obstructionist" in an effort to embarrass you.

These are the rules that Republicans in the House of Representatives must play by every day. Mr. Solomon, who testified earlier on the subject of committee reform, described this treatment as "the decline of deliberative democracy." And I would like to repeat a quote that Mr. Solomon used from Former Speaker Sam Rayburn who, during a radio address on the Texas Forum of the Air on November 1, 1942, said:

"Not all the measures which emerge from the Congress are perfect, not by any means, but there are few which are not improved as a result of discussion, debate and amendment. There are very few that do not gain widespread support as a result of being subject to the scrutiny of the democratic process."

Mr. Chairman, improving legislation through democratic scrutiny is, in my view, the principle that should guide this Joint Committee in its efforts to reform the operations of Congress. In fact, we would be hard pressed to find any one of our colleagues, Democrat or Republican, who would dispute Sam Rayburn's statement. That being the case, there should be no controversy. But there is! If you were to ask me in one word to describe what has gone wrong with the process and what is needed to restore public confidence in this institution, the word I would use is "accountability."

Many features of the present structure, organization and procedures of Congress allow House Members to avoid public accountability on many controversial and important issues. These include a large and seemingly "permanent" staff bureaucracy, 266 committees and subcommittees with overlapping and contradictory jurisdictions, proxy voting, and a bewildering budget process. However, the most overt tools used to obscure and avoid political accountability is the use of restrictive floor procedures and rules abuses.

Ironically, this very same issue was at the heart of the 1974 freshman revolt that opened up the process by weakening the seniority system and expanding access to floor voting and participation. But slowly, as those reformers gained seniority and leadership positions, progress toward openness has degenerated.

Consequently, deliberation, accountability, and representation are no longer the distinguishing characteristics of the House of Representatives. Instead, the situation is reminiscent of the big city political machines that flourished earlier in this century. We have constructed a patronage system on a massive scale. It doles out favors to influential interest groups, promises utopia to the masses without acknowledging trade-offs, and punishes those who have a difference of opinion with the machine's agenda.

What this machine doesn't do is produce thoughtful legislation that commands widespread public support. In fact, I don't think it's a mere coincidence that the growing prevalence of restrictive floor procedures has coincided with the decline in public support for Congress as an institution. We have all heard the numbers, but they bear repeating. In the 95th Congress, 85 percent of the legislation that passed through the Rules Committee were open to germane amendments on the floor. In other words, any Member could stand up at any time and offer a germane amendment that he or she thought could improve the bill. In the 102nd Congress, the Rules Committee permitted open debate just 34 percent of the time.

What does the ability to offer an amendment have to do with accountability? If a member has the power to offer an amendment, he can no longer claim to support one thing, but then say that he was blocked in his effort to make a change in the law. In addition, with more floor votes on more clear issues, members will be forced to take clear positions with their votes. That is exactly what the American people want -- fewer excuses, and more elected officials who actually stand for something.

We are all familiar with what has happened this year with restrictive rules, and I want to take a moment to commend Speaker Foley for his April 22 statement in which he said there will be open rules on major legislation. But let me also preface that by saying that placing non-controversial bills, like the Passenger Vessel Safety Act, on the regular calendar to pad the "open rules" numbers is not a good faith effort to address this problem. I hope that the Speaker will continue to work with the Republican leadership on a reasonable accommodation.

There are two excuses for restrictive rules that I find particularly frustrating, and I want to dispel them. First, some have made the contention that restrictive rules are necessary to prevent Republicans from offering amendments intended simply to embarrass Democrats. I will acknowledge that Republicans have, on occasion, offered amendments to embarrass Democrats.

But a simple analysis of the amendments that have been denied by the Rules Committee show this argument is very weak. Many are substantive, such as:

- an amendment by Mr. Grandy to the family leave bill to provide tax incentives to small firms that offer leave benefits;
- an amendment by Mr. Livingston to the Motor Voter bill to allow states to remove the name of a person from the registered voters list if the person has not voted during the previous 10 years;
- an amendment by Mr. Shaw to the unemployment extension bill to provide additional weeks of benefits to people in federally declared natural disaster areas; and
- amendments by Mr. Wolf to the Hatch Act reform bill to protect federal workers from excessive political coercion.

Second, some defend closed rules by claiming that they prevent obstructionist tactics, and are needed to speed legislation through the process. It only takes a moment to look at the House schedule over the first five months of this year, with weeks going by with little or no floor activity, and see continued use of completely closed rules to see that scheduling needs do not drive the restrictive rules. If anything, creative scheduling and the imposition of phoney deadlines become a weak excuse for limiting the rights of the vast majority of House members.

Along with restricting the ability to amend legislation on the floor, there are other procedural abuses that allow Congress to evade accountability. Examples include:

- o Motions to instruct conferees -- These are used more frequently because Members are often prohibited from offering amendments to relevant legislation. Unfortunately, because these motions are not binding, Members can vote for the "popular" position on a bill without the threat of that position becoming law. Recent examples include the elimination of franked mass mailings in 1989 and a prohibition on HIV infected immigrants coming into this country.
- o Self-executing rules -- These are increasingly used to avoid direct floor votes on substantive issues, and cloak them in the shroud of "procedural" votes. Once again, the goal is simple, avoid accountability by making a vote as difficult to follow as possible. The most recent example that

comes to mind involves is the Family Medical Leave Act. The rule on the conference report contained self-executing language that made the vote on the rule the vote on the Senate amendments. Those amendments included a resolution affirming the President's interim policy on gays in the military. The Senate debated the resolution for three hours, but not a peep was uttered in the House. Worse, since legislative language was not available for Members to read, many were not aware of the provision until they were asked to come to the House floor to vote.

o King-of-the-Hill rules -- These rules, in which the last amendment to pass is the one that is adopted, are typically used to frame the debate over broad policy issues. The biggest criticism is that the last amendment has the advantage. This is the least of my concerns. More disturbing is how this procedure can be used as a "bait-and-switch" maneuver. It was used on President Bush's rescission package last year. Intentionally or not, it allowed Members to be on record voting to cut spending on such items as animal manure studies and prickly pear research even though the funds would be restored on the next vote.

o Waiving the 3-day layover rule -- Under the rules of the House, Members must be given three days to read and review a bill before it can be considered on the House floor. This is especially important today because, over the past 20 years, the average bill has quadrupled in size. Tax and budget bills tend to be hundreds, if not thousands, of pages long. This year, the 3-day layover rule was revoked on 77 percent of the legislation that passed through the Rules Committee, up from 8 percent in 1976-77. Increasingly, Members are forced to vote on complicated legislation they have never seen. The details are known only to a handful of non-elected committee staff people who are not held accountable to the voters. This is a fear I have with the upcoming reconciliation bill. Members may not have a chance to read the biggest tax bill in American history because Congress will be under pressure to meet a recess deadline.

These are just a few commonly used procedures that, intentionally or not, weaken the legislative process and undermine accountability. Others include the prohibition on revenue-neutral en bloc amendments to appropriations bills and the practice of legislating in appropriations bills. I am also constantly amazed by the degree of sophistication and ingenuity that goes in to new ways of avoiding deliberation and accountability. Most recently on the debt limit extension bill, the House, by declaring the measure as "reconciliation" legislation, essentially imposed a gag rule on the Senate, prohibiting debate on balanced budget and line-item veto amendments.

I can certainly understand the views of the majority. They were elected to control the agenda and the schedule, and they have an obligation to put forth clear and concise legislation that represents their vision of government. I also acknowledge that restrictive rules -- not closed rules -- are useful and necessary on occasion when the leadership of both parties agree, such as when we

consider major tax bills and the DOD authorization bill. Nobody in the minority disputes those contentions, and we are not out to change the principle of "majority rule." What I and my Republican colleagues are trying to change is a process that does not give the American public clear and concise legislation.

Voters are getting vague, confusing, contradictory information. Procedural abuses create a breeding ground for special interest groups to take control over the legislative process. In the end, we end up with what Milton Friedman calls "the phenomenon of concentrated benefits and dispersed costs." It explains why government programs continue to grow and proliferate after they have been clearly identified as failures.

Complete information is an essential ingredient to a functioning market. It works in the markets for goods and services, and it will work in the market for ideas. What I am asking for is the equivalent of a consumer protection act for legislation. If groups like Common Cause, Public Citizen and Congress Watch are serious about competitive politics and reducing the influence of special interest groups in the legislative process, they would be as vocal against restrictive and abusive procedures as I am today.

The question, then, is how do we find the proper balance between openness and efficiency? A number of recommendations relating to floor procedures and scheduling are contained in H.Res. 36, which was introduced by our Minority Leader Bob Michel. A summary of those recommendations are attached to my prepared statement.

A recommendation I strongly support is the concept of a super-majority vote, whether it be two-thirds or three-fifths, to waive points of order against legislation. At the beginning of each session, the majority puts forth a package of changes to the House rules that outline the procedures they deem necessary to control the agenda and the floor schedule. Once the rules are made, we should have to play by them unless extraordinary circumstances warrant otherwise.

This, in my view, is the single best reform. Congress has come under substantial public criticism for the perception that it does not have to comply with many of the laws it imposes on society. Imagine how much greater that criticism would be if the public knew that Congress -- at least, in this instance, the House of Representatives -- does not comply with the laws it imposes on itself.

To address minority concerns about restrictive rules that block important amendments, I recommend that the minority be permitted to offer one amendment to a restrictive rule before the previous question is ordered. The amendment could come in the form of an open rule substitute, or it could identify one or two specific amendments to the bill to be made in order. In this case, the majority could still preclude amendments it deems trivial or

disruptive, but a majority would have to vote in support of that position. Members would no longer be sheltered from controversial votes by the Rules Committee.

Mr. Chairman, this committee should rightfully be cautious about altering House rules governing floor procedures, which the majority needs to control the public policy agenda. In fact, my complaints are not necessarily directed at these rules per se. They are directed at the chronic failure of the majority leadership to abide by them, and at the way these rules are distorted and manipulated to evade accountability. That is a situation that the Joint Committee can, and I hope will, address when we begin developing a comprehensive package of reforms.

I hope we can have a constructive dialogue on this issue because we all want this institution to work, and to have the broad support of the American people. Thank you, Mr. Chairman.

#

**PROVISIONS RELATING TO FLOOR PROCEDURES AND SCHEDULING
CONTAINED IN H.RES. 36**

**"A MANDATE FOR CHANGE IN THE PEOPLE'S HOUSE"
(Introduced by Representative Robert H. Michel, January 21, 1993)**

A section-by-section summary of the relevant provisions. The Rules of the House of the 103rd Congress would be amended as follows:

<u>Sec. No.</u>	<u>Provision</u>
-----------------	------------------

- | | |
|------|---|
| 101. | Presentment of Bills to the President: The Speaker would be required to submit to the President any bill originating in the House not later than ten calendar days after it has been finally agreed to by both Houses. |
| 102. | Veto Messages: Immediately after the reading of a veto message from the President, the Speaker would be required to put the question on reconsideration of the vetoed bill, without intervening motion (except to postpone consideration for not more than 10-legislative days), in order to prevent avoidance of a vote by indefinite referral to a committee. |
| 103. | Broadcast Coverage: The Speaker would be required to provide for uniform visual broadcast coverage of House proceedings throughout the day, which could include periodic views of the entire Chamber providing they do not detract from the person speaking. |
| 104. | House Scheduling: At the beginning of each session of the House, the Speaker shall announce a legislative program for the session which shall include target dates for the consideration of major legislation, weeks in which the House would be in session (with five-day work weeks assumed unless otherwise indicated), dates for district work periods, and the target adjournment date. |
| 119. | Same Day Consideration of Rules Committee Reports: An order of business resolution ("special rule") reported from the Committee on Rules shall not be considered on the same calendar day as reported or on a subsequent calendar day of the same legislative day, except by a two-thirds vote of the House. |
| 120. | Affirming Minority's Right on Motions to Recommit: The Rules Committee could not report a special rule denying the minority the right to offer amendatory instructions in a motion to recommit. |
| 121. | Restrictive Rule Limitation: The Rules Committee could not report a special rule limiting the right of Members to offer floor amendments unless the chairman has announced to the House at least four days in advance of a meeting on the measure that such a rule may be reported. |
| 122. | Limitation on Self-Executing Rules: The Rules Committee could not report a special rule providing for the automatic adoption of an amendment, bill, joint resolution, conference report, or other motion or matter, unless the House, by a two-thirds vote agrees to the consideration of such a rule. |

123. **Budget Waiver Limitation:** The report on any special rule waiving any provision of the Budget Act would be required to carry an explanation and justification of the waiver as well as a summary or text of any comments on the waiver received from the Budget Committee. A separate vote could be demanded in the House on any such waiver contained in a rule.
125. **Commemorative Calendar:** A House Commemorative Calendar would be established on which unreported commemorative legislation could be placed upon the written request of the chairman and ranking minority member of the Post Office Committee. The Calendar would be called twice a month and any two objections would cause a commemorative to be removed from the Calendar.
126. **Accuracy of Congressional Record:** The Congressional Record would be a verbatim account of proceedings, subject only to technical, grammatical and typographical corrections by the Member speaking. Unparliamentary remarks may be deleted only by unanimous consent or order of the House.
127. **Automatic Roll Call Votes:** Automatic roll call votes would be required on final passage of appropriations, tax and Member pay raise bills and conference reports, and on final adoption of budget resolutions and conference reports containing debt limit increases.
131. **Pledge of Allegiance:** The Pledge of Allegiance would be required in the House as the third order of business each day.
132. **Suspension of the Rules:** Measures could not be considered under a suspension of the rules except by direction of the committees of jurisdiction or on the request of the chairman and ranking minority member of the committees. No measure could be considered under suspension which authorizes or appropriates more than \$50-million for any fiscal year. Notice of any suspension must be placed in the Congressional Record at least one day in advance of its consideration together with the text of any amendment to be offered to it. No constitutional amendment could be considered under suspension.
133. **Discharge Motions:** The Clerk of the House would be required to publish in the Congressional Record the names of those Members signing a discharge petition once a threshold of 100 signatures has been reached, and to publish an updated list of names at the end of each succeeding week.
134. **Inclusion of Views in Conference Reports:** Members of conference committees would be permitted three calendar days after a majority of signatures had been secured in support of the conference report, in which to file supplemental, minority, or additional views to be published with the report.
148. **Repeal of Certain Amendments to Rules:** The following amendments to House Rules adopted on January 5, 1993 (H.Res. 5, 103rd Congress) would be repealed: (a) permitting two-day delays of consideration of questions of House privileges; (b) permitting committees to sit while the House is amending legislation; and (c) allowing non-Member delegates to vote in and preside over the Committee of the Whole.

WRITTEN STATEMENT OF
THE HONORABLE DEBORAH PRYCE
U.S. HOUSE OF REPRESENTATIVES

before

THE JOINT COMMITTEE ON THE ORGANIZATION OF CONGRESS

MAY 20, 1993

Let me begin by thanking the members of the joint committee for the opportunity to share some perspectives as a member of the freshman class on the need for congressional reform. Examining changes to this venerable institution is a significant challenge and responsibility, and I commend you all for the work you are doing.

I would also like to recognize the contributions of my colleague Jennifer Dunn, a member of the Joint Committee, whose active participation helps give voice to the concerns of newly elected Republicans in the 103rd Congress.

As you may know, unlike my colleague, Congressman Lincoln Diaz-Balart, I did not come to the House of Representatives with any previous legislative experience. My experience comes from a legal background -- having served as a county prosecutor and municipal court judge in Franklin County, Ohio.

Because I was a relative "outsider" to the legislative process here in Congress, I felt I was in a unique position to better understand the growing dissatisfaction among voters across America over the way Congress conducts its business. Achieving meaningful congressional reform was a theme I emphasized throughout my campaign. I saw my victory as an opportunity to work for the kinds of changes necessary to improve the American public's confidence in their national legislature.

If we learned anything from last year's elections it is that the American people expect us to have our own house in order. In an effort to respond to that call, the Republican and Democratic freshman classes each introduced a comprehensive set of reform proposals early in the session. I'm hopeful that the efforts of the freshmen classes, as well as those of the Minority Leader's Task Force on Congressional Reform, and your deliberations on this committee can combine to bring about genuine congressional reform during the 103rd

Congress.

While Lincoln and I are pleased to come before you as representatives of the Republican Freshman Class, we are also here on behalf of the Republican Leader's Task Force on Deliberative Democracy in the House, of which we are both members. The Task Force's purpose is simple: to educate Members and the public about abuses of the democratic process in the House. Our message is equally simple: the American people can be better served by a Congress which respects the right to free and open debate on the merits of the issues.

The Task Force has, up to now, focused on the need to increase the number of opportunities in which Members can offer amendments to major legislation being considered on the House floor. By refusing to allow bills to come to the floor open for amendment, millions of citizens are literally disenfranchised when their respective Representatives are prevented from offering various amendments. When Members of Congress are elected with the expectation that they will be exercising their rights as lawmakers on behalf of their constituents, only to be told that they may not fully participate in the democratic process, there is something seriously wrong with the democratic scheme of things in this body.

On April 22nd, the Deliberative Democracy Task Force released a brief report assessing the state of deliberative democracy in the House today. We feel very strongly that true deliberative democracy -- the very process on which responsible representative government depends -- is in a dangerous decline. In the report is a chart which shows that for every Congress since the 95th Congress, the number of open rules as a percentage of total rules granted has steadily declined, and, some would say, at an alarming rate. For example, in the 95th Congress, 85 percent of all rules granted were open. In the 99th Congress, 57 percent were open. In the 102nd Congress, that number dropped to 34

percent. So far this year, we have had only one open rule.

I would like to take a moment, though, to commend the Rules Committee for granting an open rule to the National Competitiveness Act, H.R. 820. It may have taken the House nearly three weeks to get through this one bill, but as former Speaker Sam Rayburn once put it:

"Not all the measures which emerge from the Congress are perfect, not by any means, but there are very few which are not improved as a result of discussion, debate and amendment. There are very few that do not gain widespread support as a result of being subject to the scrutiny of the democratic process."

By focusing on educating the voting public, the Task Force on Deliberative Democracy hopes to raise the level of awareness and understanding of where the democratic process is headed in the House. In an increasingly competitive world community, we need to foster the kind of deliberative process in which we are all involved in developing the best possible laws under which we and our constituents will be proud to live. And so I would encourage this Committee to take a serious look at how granting more open rules can bring about substantive improvements to major national legislation.

It is true that the American people voted for change and an end to gridlock. But they don't want us to end gridlock at the expense of democracy or by diminishing the "scrutiny of the democratic process" which Speaker Rayburn described back in 1942.

When Ross Perot spoke to the Republican freshman class yesterday, he reminded us that the American people are watching this institution very closely. They want, and they expect, a Congress which crafts its policies in a thoughtful, deliberate manner and they

expect their elected Representatives to be able to improve legislation at all points along the process -- in subcommittee, in full committee, and ultimately on the floor of the House.

At a recent gathering in my district, several leaders of the local business community asked me why no Member had offered an alternative to the Family and Medical Leave Bill based on tax incentives rather than more federal mandates. I did my best to explain that just such an amendment had been offered but that the Rules Committee did not allow it to be debated on the House floor when it came time to vote. When constituents expect us to debate the issues thoroughly, it's difficult for Members to explain to them why they are not given those opportunities to vote on alternative amendments when major bills come before the full House.

In closing, let me say that I recognize that reaching agreement on promoting freer and more open debate will not come easily. Although it is one element of a much broader effort to make representative government in the House truly representative, moving toward a policy of more free and open debate will very likely raise the level of esteem in which the American people hold this institution.

As I said at the outset, this Committee has a heavy responsibility to recommend reforms to Congress and I commend you for the work you are doing. I appreciate having the opportunity to share my thoughts with you and look forward to working with you in the time ahead. I think I can speak for my colleagues in the Republican freshman class in saying that we are more than willing to work with our friends across the aisle to bring about meaningful congressional reform.

STATEMENT TO THE JOINT COMMITTEE
ON THE ORGANIZATION OF CONGRESS

BY LINCOLN DIAZ-BALART (FL-21)

MAY 20, 1993

Thank you, Mr. Chairman and Members of the Committee for this opportunity for us to address the Joint Committee on open rules. I am here to speak on behalf of the Task Force on Deliberative Democracy, representing the New Member perspective along with my colleague, Deborah Pryce. As new Members of Congress, we come from somewhat different backgrounds. Ms. Pryce brings with her valuable knowledge from being a very respected judge in Ohio, and I am honored to share this panel with her. I would like to focus my remarks on my experiences dealing with rules as a state legislator in Florida.

I am encouraged by the meaningful discussion that is taking place in this committee. I believe some refreshing points of view have been offered and would hope that many of the suggestions will be implemented.

In the Florida House of Representatives, we were dealing with over a quarter as many people as the U.S. House, but we only had two months each year to meet and complete our legislative business. Amendments were often defeated by the majority, but EVERY MEMBER had the right to offer a germane amendment to every piece of legislation. Often, amendments were offered when committees were marking up bills, but they could also be offered directly on the floor. The only limits were on the time involved for debate. Each amendment had the opportunity to be decided on

Statement by Diaz-Balart
Page Two

its merits, and by the full House. Accordingly, each constituent in Florida was equally represented because each member of the State House had the same opportunity to offer amendments to legislation. It was not chaotic because the minority had no incentive to resort to dilatory tactics. We were able to compromise and work with camaraderie to get major legislation enacted.

I have made my first visit to the esteemed Rules Committee of the U.S. House of Representatives.

I went to testify about an amendment to the Unemployment Benefits Extension bill that would have helped victims of Hurricane Andrew. Congresswoman Carrie Meek offered a similar amendment. The Rules Committee patiently listened, and no one even argued that our amendment was a bad idea or too costly. In fact, Members seemed to agree that the people we were trying to help were indeed worthy of our assistance.

However, no amendments that members offered that day were allowed to the bill. Not one of our amendments was given the chance to be decided by the full House on its merits. Not one of us got the chance to have our amendment fully debated. We were told that the Administration wanted a "clean bill," and therefore no amendments would be made in order.

It is my hope that the House of Representatives can enact legislation based upon its own beliefs and the wishes of all of our constituents. As Members of the House of Representatives, we

Statement by Diaz-Balart
Page Three

have to answer to our voters every two years and are the elected federal officials responsible for representing the interests of our own particular part of the country. Opening up the rules process in a reasonable manner will let members offer amendments that their peers in the full House may approve or disapprove, based on substance and the merits of each proposal. A more open rules process will enable the government to operate efficiently, and yet fairly and with the proper balance of power among all branches. Thank you very much.

**Statement for the
Joint Committee on the Organization of Congress**

**Steven S. Smith
University of Minnesota**

May 20, 1993

A Summary of Recommendations for House and Senate Floor Procedure

House of Representatives

1. The House should move to a schedule that parallels the Senate's intended schedule of three-weeks in/one-week out. This might be accomplished by passing an annual concurrent resolution on the congressional schedule.
2. The House should guarantee the minority leader or his designee a right to offer a motion to recommit with instructions. Amendments ordered by motions to recommit that have not been considered in the Committee of the Whole should be required to be printed in the Record at least one day in advance.
3. The Rules Committee should not report rules that waive layover requirements for committee and conference reports except when absolutely necessary.
4. The House should require that the one-day layover rule for special rules apply to the text of amendments explicitly placed in order by the special rule as well. The House should require that the text of such amendments be printed in the Record or in a Rules Committee report at least one day in advance of floor consideration if the amendments have not been printed in the bill or a committee report.
5. The House leadership should schedule general debate on controversial measures during prime-time hours and more creatively structure debate on key amendments.

Senate

1. The Senate should reduce the number of opportunities to filibuster to three--initial debate on a measure and amendments thereto, debate on a consolidated motion to go to conference, and debate on a conference report.
2. The Senate should take further steps to eliminate dilatory action after cloture has been invoked.
3. The Senate should allow a simple majority to temporarily structure the consideration of amendments on the floor.
4. The Senate should adopt a less-than-unanimous-consent rule for the adoption of certain requests of the Majority Leader.
5. The Senate should adopt an annual agenda that would give a legislative right-of-way to the listed measures.
6. The Senate should establish a standard time for conducting general debate on major legislation.

I am pleased to be with you today to offer my thoughts on improving floor procedure in the House and Senate. I begin with the House, for which I urge the adoption of a Senate-like schedule of three weeks in/one week out. I would also like to see a reversal of recent trends in special rules. For the Senate, where floor procedure is a much more serious problem, I recommend a few steps that will give more order and structure to floor activity without undermining the prerogatives of individuals and minorities.

Before turning to the House, I would like to make a few observations about the place of floor activity in the legislative process. Many of the problems of floor decision making originate in developments off of the floor and at earlier stages in the process. Let me highlight just a few of them.

Partisanship. Inter-party conflict has intensified in recent years, partly as a result of the shrinking blocs of moderates in the two parties. This has reduced inter-party cooperation in committee deliberations, intensified partisan rhetoric, and encouraged partisans to fully exploit their procedural options on the floor.

Personal Distractions. Members have spent more and more time in their districts and states, at speaking engagements, and fundraising. In the Senate, Members are spread more thinly across an ever-increasing number of committees and subcommittees. The activities have directed the attention of Members away from the floor. As a result, Members press their leaders to abbreviate floor sessions and make other scheduling concessions. This means accommodating the Tuesday-Thursday schedule of Members as much as possible and attempting to squeeze floor debate and amending activity into a narrowing window.

Omnibus and Multi-Committee Legislation. Multiple-committee bills, most of which are subject to multiple referral in the House, have sometimes altered the character of floor decision making in fundamental ways. Inter-committee negotiations have frequently produced amendments in the nature of substitutes and last-minute compromises that are not subject to the requirement that a committee report be filed. Furthermore, negotiated agreements among majority party committee leaders have often excluded minority party Members from the affected committees. And the parties to the negotiated agreements have sought and received protection from floor amendments.

Even single-committee bills have grown in size. "Omnibus" bills addressing several related subjects are common. The breadth of subject matter contained in measures has expanded in the past two decades, increasing the number of potential targets for amendment in omnibus measures.

Declining Deference to Committee Leaders. Beyond partisanship, the lack of

deference to committee leaders by rank-and-file Members, particularly among House Republicans in recent years, reflects frustration with committee deliberations. This frustration stimulates demands for opportunities to pursue amendments on the floor.

Plainly, the character of floor politics reflects much more than floor procedure. Indeed, several of the reforms under consideration in this Congress--campaign finance reform, reform of committee jurisdictions and assignments, scheduling changes--as well as developments within the four congressional parties are likely to alter the character of floor decision making. I urge the Joint Committee to keep the consequences for the floor of its recommendations in these other areas.

The House

The major issue concerning House floor procedure is how to protect minority rights in a majoritarian institution. In recent years, Republican objections to their treatment under special rules have become particularly intense and, as recently as the last month, may have stimulated a modest change in the Speaker's approach to special rules and the motion to recommit. Republican objections concern four issues: restrictions on amendments, the manner in which the Committee on Rules processes requests that amendments be made in order, waivers of the layover rules on committee and conference reports, and motions to recommit with instructions. Before addressing those issues, it may be useful for me to provide some perspective on how this partisan battle over floor procedure developed over the last two decades.

1971 to the Present

The escalating conflict between House Democrats and Republicans on the floor dates to the early 1970s, when reformers of both parties supported reforms to provide for recorded, electronic voting in the Committee of the Whole. A consequence of those reforms was increase in the number of amendments offered on the House floor. Fewer than 900 amendments were offered in the 91st Congress (1969-1970) and fewer than 800 were offered in the 92d (1971-1972), but over 1,400 were offered in the 93d (1973-1974) and nearly 1,400 were offered in the 94th (1975-1976). In the 95th, floor amendments peaked at nearly 1,700. Clearly, the incentive to put oneself or one's opponents on the record helped to stimulate more amending activity. Perhaps, too, as the Democratic reformers hoped, some amendment sponsors were encouraged by the increased prospects of success that came with making Members publicly accountable for the votes in the Committee of the Whole.

Second-Guessing Voting Reform. As the experience with recorded voting in the Committee of the Whole accumulated, even some reformers' views were tempered by the

deluge of Republican amendments. Minority party Republicans sponsored a disproportionate number of amendments in the 1973-1979 period, after having sponsored no more than their proportionate share in the 1967-1972 period. Moreover, Republicans were more likely than Democrats to push their amendments all the way to a recorded vote. A group of Republicans--John Ashbrook of Ohio, Robert Bauman of Maryland, and John Rousselot of California--deliberately badgered Democrats with many amendments and requests for recorded votes. Bauman, the leader of the group, once told me that he entertained requests from Republican challengers to Democratic incumbents for amendments and recorded votes in order to force those Democrats to cast votes that would be difficult to explain at home.

Democrats, including many who supported the voting reforms, became more frustrated with floor activity as the 1970s wore on. Floor activity became more unpredictable. Repeated votes on hot-button issues were especially annoying. Personal and committee schedules were frequently upset by a spate of recorded votes in the Committee of the Whole. And the length of the daily sessions increased.

Democratic responses to these new conditions came in several forms. Within the first year after the introduction of electronic voting, some Democrats sought to increase the number of Members required to call for a recorded vote from 20 to 44. No change was adopted until 1979, when the threshold was increased to 25.

A second adaptation was increased use of suspension of the rules to consider and pass measures. Because no amendments are allowed under a motion to suspend the rules, the technique offered bill managers a way to avoid unfriendly amendments. For the majority party leadership, the approach expedited consideration of noncontroversial legislation that was not likely to face amendments anyway. To facilitate increased use of suspension of the rules, the Democrats succeeded in changing the rule to permit suspension motions of more days. The consequence was a nearly doubling of the number of suspension motions in the 1970s.

Moving to More Restrictive Rules. These adaptations had only marginal effects on the number of floor amendments. Continuing frustration about floor activity led a group of Democrats in 1979 to demand of Speaker Thomas P. "Tip" O'Neill that he instruct the Rules Committee Democrats to report special rules that limit amendments. Until that time, restrictive rules generally had been reserved for tax bills and a few others from the Committee on Ways and Means. These Democrats insisted that a judicious use of restrictive rules, at least for major bills, would limit amending activity and yet provide an opportunity to vote on significant policy alternatives.

There was more than just a little irony in the Democrats' demands for more restrictive special rules. Many of them had sought to limit the use of restrictive rules in their attack on the Ways and Means Committee during the reform years of the early

1970s. By granting the Speaker the authority to nominate the Democratic members of the Rules Committee, they hoped to make Rules' decisions more responsive to the party's preferences. In fact, the immediate effect of this intra-party reform was a sharp cutback in closed and modified-closed rules in the mid-1970s.

By the late 1970s, Democrats began to appreciate the nature of the problem they had created for themselves. Individual Democrats, like the Republicans, benefited from the opportunity to freely offer floor amendments and obtain recorded votes. And yet Democrats shared a collective interest in reducing the threat of recorded votes on Republican-sponsored amendments and in improving the predictability of floor activity. More restrictive special rules, devised by Democrats for Democrats, seemed to be the ideal solution.

The move to more restrictive rules was swift. Richard Bolling of Missouri, the chief Democratic strategist on the Rules Committee and proponent of a strong speakership, assumed a leading role in designing restrictive rules. The shift to more restrictive rules was accompanied by innovations in the way floor debate and amending activity could be structured. Some innovations were stimulated by large omnibus and multi-committee bills, which posed serious logistical and political problems for the Speaker and the Rules Committee. And many of the innovations had the blessing of Republicans. Gradually, through an *ad hoc* process of trial and error, special rules became more and more restrictive.

Restrictions on amendments have facilitated other developments in special rules. For example, alternative substitutes--substitute amendments that were not reported by a committee with jurisdiction--have sometimes been made in order as original text for purposes of amendment. Such substitutes, which are usually negotiated as a measure awaits floor action, are frequently associated with last-minute negotiations among the leaders of two or more committees. Restrictions on amendments to a compromise are a way to enforce a delicate agreement. These have become more common as multiple referral has become more common. Negotiations over alternative substitutes are not governed by procedural safeguards for rank-and-file members, often involve no formal committee action, and frequently exclude minority party Members from meaningful participation.

"Self-executing" provisions also have become more common. A self-executing rule is one that provides that upon adoption of the rule some additional action is deemed to have been taken by the House. It is a way of gaining the approval of an amendment without subjecting it to a separate vote in the Committee of the Whole or in the House. Before the shift to more restrictive rules, self-executing provisions were used on occasion to dispose of Senate amendments before or after conference. They are now used much more frequently, often in conjunction with restrictions on other amendments, for controversial amendments during initial floor consideration of measures.

With increasing frequency, restrictions on amendments have been accompanied by other provisions that supplement or supplant the standing rules. The layover rules for committee and conference reports have been waived to expedite consideration of legislation. Requirements for reports have been circumvented by placing in order alternative substitutes. Budget Act requirements have been waived, in part because of the antiquated nature of many provisions of the Budget Act. Germaneness requirements have been waived so that large substitute amendments could be considered. Furthermore, as a by-product of restricting amendments in the Committee of the Whole, the minority party's freedom to determine the amendatory provisions in motions to recommit with instructions sometimes has been limited. In some cases, the minority party's ability to offer a motion to recommit with instructions has been directly limited.

These changes represent a fundamental change in the amending process. For most major legislation, offering an amendment now entails submitting amendments in advance to the Rules Committee. Gaining Rules Committee approval often involves seeking the support of committee and party leaders and making a personal appeal to Rules Committee members--Republicans as well as Democrats--for the opportunity to offer an amendment. In practice, the edge seems to be given to amendments sponsored by members of the committee originating the legislation. This process has turned what was previously considered to be a right into a privilege and restricted the participation of Members who do not sit on the committee of jurisdiction.

Limiting Limitations Amendments. At about the same time Democrats were gaining comfort from more restrictive rules, they realized that limitation amendments to appropriations bills continued to be a problem. Limitation amendments place restrictions on the purposes for which funds may be used without changing any other existing law (legislative "riders" change existing law, and are prohibited by House rules). House precedents permit such amendments to appropriations bills, even though they often have important policy implications. Authorizing committees had complained for decades that limitation amendments undermined their jurisdiction, while others, including appropriators, found the annual appropriations bills to be useful vehicles for pursuing their policy objectives. In the 1970s and early 1980s, limitation amendments were used disproportionately by Republicans and concerned many controversial issues. In the 96th Congress (1979-1980), more than 120 limitation amendments were offered, up from less than 40 in the 91st (1969-1970).

As privileged matters, appropriations bills did not require special rules to be taken up on the floor, so the move to restrictive rules did not reach to them, at least not at first. The Democratic solution was to adopt a general rule that makes it difficult to consider limitation amendments to appropriations bills.

The new rule, adopted in 1983, requires that members who seek to offer limitation amendments wait until all other amendments are considered. At that point, the bill

manager may make a non-debatable motion that the Committee of the Whole rise and report the bill to the House. If the motion to rise is adopted, the opportunity to offer a limitation amendment is lost. Limitation amendments were virtually eliminated by the rule. The rule has not purged appropriations bills of limitation provisions, though. The Appropriations Committee remains free to include such provisions in the bills it reports to the floor.

Partisanship. One inference to draw from this brief history is that restrictions on amendments have both non-partisan and partisan foundations. While a few Members have objected to all special rules that restrict amending activity, most Members appear to appreciate some order and predictability in floor amending activity. Indeed, Republicans have supported many special rules that have restricted amendments or waived standing rules. And at other times Republicans have been divided in their views about special rules, typically because of intra-party disputes over tactics.

Yet, most of the important developments during the past two decades reflect the inter-play of the parties. But casting blame seems pointless. Republicans have used their parliamentary prerogatives for purely symbolic or political purposes on many occasions. In the eyes of many Democrats, Republican abuses of the right to offer amendments have compelled that the right be circumscribed. Democrats have often over-reacted by excessively restricting amending opportunities on the floor. In the eyes of Republicans, many of these restrictions represent nothing less than a spiteful suppression of alternative views and basic parliamentary rights, even when the Democrats have votes.

The result has been a one-sided parliamentary arms race between the parties. Each move and counter-move seemed justified on the basis of that party's policy principles and tactical circumstances. The cumulative effect is a system that does not serve the interests of the American people as well as it should.

Some Consequences of the New Practices

I have little doubt that the tightening of restrictions on amendments have materially affected the policy choices made by the House. Of course, claims about the precise nature of the effects are speculative. We cannot know with any degree of certainty what policy choices would have been made if different rules had been adopted. But several propositions about the consequences of current practices seem reasonable:

- (1) Rules Committee requirements for advance disclosure of amendments disadvantage parties or factions that need additional time to modify their proposals in order to attract additional votes;
- (2) Substitutes that are negotiated at the post-committee/pre-floor stage and

then are protected by special rules disadvantage rank-and-file and minority party Members;

(3) Waiving layover rules for committee and conference reports reduces the time that Members have to mobilize opposition to legislation;

(4) Restrictions on amendments often serve to enforce agreements made among majority party Members that might otherwise unravel if certain amendments were allowed;

(5) Prohibiting amendatory instructions in motions to recommit eliminates the element of surprise from the last stage in initial House consideration of legislation; and

(6) Perhaps most important, restrictive rules have prohibited consideration of at least a few amendments that would have been adopted by the House.

Modest Proposals for Reform: The House

I do not favor substantial constraints on the discretion that may be exercised by House majorities to establish floor agendas through special rules. The House was intended to be responsive to new issues and shifting public sentiments. New rules that reduce the ability of a majority to act expeditiously should be avoided. The size of the House, combined with the extraordinary incentives for Members to fully exploit every parliamentary prerogative in the modern Congress, dictate that the majority party exercise care over the floor agenda to prevent chaos on the House floor and insure that outcomes are consistent with majority preferences.

To be sure, concerns about individual and minority rights are legitimate and should be addressed by the Joint Committee. To that end, I have a few modest recommendations.

1. The House should move to a schedule that parallels the Senate's intended schedule of three-weeks in/one-week out. This might be accomplished by passing an annual concurrent resolution on the congressional schedule.

I mention scheduling first because I think that current scheduling practices have a pervasive effect on the character of House floor activity. For example, holding votes on only three days a week places a premium on streamlined debate and amending activity

and encourages more restrictive rules. And waivers for layover requirements are encouraged by short work weeks. Five-day a week sessions, for three out of every four weeks, yields 15 days of floor action, in contrast to the 12 days that are typical under current practices.

It would be useful for the House and Senate to adopt a concurrent resolution at the start of each year to establish parallel schedules for the year. The resolution could allow the presiding officer or chamber majorities to modify the schedule as the session proceeds.

2. The House should guarantee the minority leader or his designee a right to offer a motion to recommit with instructions. Amendments ordered by motions to recommit that have not been considered in the Committee of the Whole should be required to be printed in the *Record* at least one day in advance.

I am sympathetic to the concern of the minority party about the restrictiveness of special rules in recent years. Complaints that some special rules have been unnecessarily restrictive are well founded. Yet I do not think that the altering the majoritarian character of the House is in the public interest. House majorities should be allowed to structure the decision-making process and make policy choices within very broad constraints.

In particular, I oppose a guaranteed right to offer amendments or a certain number of amendments in the Committee of the Whole. In some cases, after all, the fairest alternative is to allow the minority a single substitute amendment. Nor should an extraordinary majority requirement be established for special rules that limit amendments to some small number. And I do not support a rule that would guarantee an opportunity to offer an amendment upon the filing of a petition signed by a specified number of Members.

Instead, the minority party leader, or his designee, should have a guaranteed right to offer a motion to recommit with instructions. The minority leader should be guaranteed the right to include amendatory provisions in his motion to recommit even if a special rule prevents those provisions from being embodied in an amendment considered in the Committee of the Whole or provides for an amendment in the nature of a substitute.

The majority party has a legitimate concern that there be adequate time to study the amendatory provisions of a motion to recommit with instruction. This concern should be addressed by a requirement that the amendatory provisions be available in printed form in advance. Specifically, if the amendment ordered by the motion to recommit has not been considered in the Committee of the Whole, that amendment must be printed in the *Record* at least one day in advance.

My proposal differs from the proposal of Minority Leader Robert Michel, who prefers a more direct approach. In H.Res. 419, 102d Congress, the Minority Leader

proposed that Rule XI, Clause 4(b), explicitly guarantee a right to offer a motion to recommit "with amendatory instructions." This would overturn a 1934 precedent that interprets the current rule as guaranteeing only a right to offer a motion to recommit but not guaranteeing a right to include amendatory instructions.

To prevent the Speaker from exercising discretion in recognizing a Member to offer a motion to recommit with instructions, I suggest that the right to offer the motion be lodged with the Minority Leader. This risk in this approach is that the Minority Leader will hold a majority view of pending legislation. But I see great value in forcing opposition leaders to work through the Minority Leader to craft a final alternative. This will strengthen the Minority Leader's role in devising minority party strategy. In any event, the probability that an amendment would have majority support in the face of opposition from both the Speaker and Minority Leader seems quite small.

I am pleased to see that rules foreclosing motions to recommit without instructions have not been a problem in recent months. Nevertheless, I think that the minority party has a strong argument for some guarantee of its right to offer at least one germane alternative.

3. The Rules Committee should not report rules that waive layover requirements for committee and conference reports except when absolutely necessary.

I do not favor a requirement for an extraordinary majority for any special rule that waives the three-day layover rule for committee and conference reports. This would unnecessarily limit the ability of the House to act quickly on emergency items that are controversial and greatly complicate floor action at the end of a session. But I encourage the Rules Committee to resist the temptation to waive the layover requirements for the sake of convenience alone. The layover requirements are intended to give Members time to develop some understanding of reported legislation and to devise amendments if they choose to do so.

4. The House should require that the one-day layover rule for special rules apply to the text of amendments explicitly placed in order by the special rule as well. The House should require that the text of such amendments be printed in the *Record* or in a Rules Committee report at least one day in advance of floor consideration if the amendments have not been printed in the bill or a committee report.

On occasion, the House has been asked to debate important amendments without having the text of the amendments in advance. The problem is most serious for large and complex substitute amendments, which often are made original text for purposes of amendment. This creates a great inconvenience to Members seeking to craft amendments to the substitutes.

The House should require that the one-day layover rule for special rules apply to the text of amendments explicitly placed in order by the special rule as well. The House should require that the text of such amendments be printed in the Record or in a Rules Committee report at least one day in advance of floor consideration if the amendments have not been printed in the bill or a committee report. Again, I would require a two-thirds majority to waive such a rule (a two-thirds majority is required to suspend the rules to adopt a special rule without a one-day layover).

5. The House leadership should schedule general debate on controversial measures during prime-time hours and more creatively structure debate on key amendments.

I am quite skeptical of proposals to create Oxford-style debates in the House. Although one or two issues each year will draw significant public attention, I doubt that much attention will be given to debates that are held on a weekly or even monthly basis. In general, debate over specific policies detailed in live legislation will be more effective than debates over artificial propositions. The expression of individual and minority viewpoints will have a far greater impact on policy choices if the public is tuned in to the debate.

On a few bills each year there is sufficient public interest to schedule debate at times when a large television audience will be attracted. The House should give up special-order speeches on those occasions and reserve time during evening hours for the conduct of general debate.

Perhaps in addition to scheduling debate for prime-time hours, the Rules Committee should more frequently structure debate on key amendments, as it sometimes has done in the past. At times, it will be appropriate to allocate to specified individuals 15 minutes or more so that they can more fully develop their arguments. This might reduce the pressure on bill managers and amendment sponsors to abbreviate their comments so that other Members have an opportunity to speak.

In considering such possibilities, the Rules Committee should emphasize the coherent elaboration of the major points of view. The Rules Committee may even want to prohibit Members from being recognized for the purpose of asking to revise and extend their remarks at those times when it seeks to structure informative debate. It might reserve for the floor managers a single, consolidated unanimous-consent request to permit certain Members to revise and extend their remarks.

The Senate

The Senate is, and ought to be, different than the House. Providing a means for the full expression of minority and individual views is the distinctive characteristic of the Senate, and it ought to be preserved. But the Senate has changed fundamentally and detrimentally because its old rules, interacting with new conditions, have produced an unhealthy individualism and epidemic obstructionism. Praying for stronger leaders and more self-control on the part of rank-and-file senators will only get us more of the same. A change in the underlying rules is essential. I propose several changes, short of allowing simple majorities to invoke cloture and bar nongermane amendments, that will make floor activity somewhat more structured and predictable.

My most useful function, I think, is to review how the Senate got to this point and suggest some ways to restructure floor activity while preserving the essential character of the Senate.

Senate Tradition

The Senate's current predicament is a long time in the making. Indeed, defenders of current Senate rules and practices often cite the great tradition of unlimited debate. Most of the rhetoric about the Senate's tradition as a deliberative body is inflated. Some of it is simply wrong. To be sure, the Senate has long been different than the House and most other national legislative bodies. But the Senate's current rules are more the product of happenstance and sheer political muscle than a commitment to genuine deliberation.

Let me first clear away some underbrush in the discussion of Senate tradition. Defenders of Rule 22 often claim the Framers of the Constitution intended minority rights to be protected by the Senate. Taken on its face, this claim is incorrect. Nowhere in the summaries of the constitutional convention or the *Federalist Papers* is there an argument for allowing Senate minority factions to block action on legislation. Of course, the Senate was designed to protect the interests of small states. And, as Madison best illustrates, some of the Framers saw separation of powers and bicameralism as means for checking a majority. For only a limited number of issues--treaties, impeachment convictions, expulsion of a Member, veto overrides, constitutional amendments--is an extraordinary majority required. Otherwise, the Constitution is silent on the specific decision rule, although well-established parliamentary practice, reflected in Jefferson's Manual, provided for simple majorities to decide questions.

The philosophy underpinning the protection of individual and minority rights in the Senate developed later. A brief review of Senate history will put current arguments about Senate tradition in proper perspective.

Henry Cabot Lodge, Harvard's first Ph.D. in political science, made a typical observation in 1893, his first year in the Senate:

Under these century-old rules, for which there is often a fine disregard, the Senate still transacts its business, largely by unanimous consent, and with a consideration for the wishes and convenience of each Senator very agreeable to them, although not a little laughed at by an irreverent public.

He added:

To vote without debating is perilous, but to debate and never vote is imbecile... A body which cannot govern itself will not long hold the respect of the people who have chosen it to govern the country.

The Senate reached the point described by Lodge through a strange, almost accidental, historical path. Under early rules, the Senate's presiding officer had the power to stop tedious debate but really had no occasion to use it. The Senate was a small body--seldom were more than 16 or 17 senators in attendance at a time--and most sessions were conducted behind closed doors. Long speeches were easily tolerated.

The early Senate was more in need of a means to avoid debate that raised delicate subjects or might force embarrassing votes. Its original previous-question motion was used a few times to put off debate or votes on sensitive issues. It was not used to force a vote. When a committee recodified Senate rules in 1806, it left out the previous-question motion. There was no debate on the matter; the only commentary offered was that a rule so little used was not needed. At about the same time, the House moved in the opposite direction to adopt effective means to limit debate.

In the eyes of many observers, the demise of the previous-question motion allowed the Senate to eventually become a great deliberative body. The grand debates among Daniel Webster, Henry Clay, John C. Calhoun, and others in the decades preceding the Civil War are cited as the start of a great tradition. A yearning for a return to those days can be found in much of the rhetoric about modern Senate practice.

Like Lodge, many senators regretted the absence of restrictions on debate or amendments. Indeed, defenders of tradition fail to point out that Webster and Clay were severe critics of unrestricted debate and sponsored resolution to allow the Senate to vote to close debate. They believed that the senators had an obligation to cast votes directly on the important issues of the day.

It was Calhoun--reinforced by fellow southerners and a few others, justified by a philosophy of government that was defeated in civil war, and armed with the filibuster--who repeatedly blocked action on those proposals. Indeed, until very recently Southern

sectionalism has been the major force behind the preservation of extended debate. Over time, defenders of unrestricted debate became quite adept at quoting their predecessors about the great tradition of the Senate. The truth is that sometimes small minorities have been responsible for defining the character of Senate tradition.

Since 1917 the Senate has had Rule 22, which allows an extraordinary majority to invoke cloture and bring a matter to a vote. The precipitating event for the 1917 rule was the successful filibuster against President Woodrow Wilson's plan to arm merchant ships during World War I. Wilson and the country were outraged that a band of 11 senators--Wilson called them "a little group of willful men"--could conduct a tag-team filibuster and prevent a vote on such a matter. The new rule was first used two years later to force a vote on Wilson's Versailles Treaty on a motion submitted by Henry Cabot Lodge.

The current rule allows three-fifths of all duly elected and sworn senators--60, if all seats are filled--to invoke cloture, except on matters pertaining to Senate rules, where a more stringent two-thirds majority of those present and voting is required. The rule perpetuates itself.

Living With Rule 22

Rule 22 is better than having no way to close debate, but it is not strong enough. The unfortunate effects of Rule 22 are seen everyday in the Senate's dependence on unanimous consent agreements and the perverse practice of holds.

Since before the Civil War, Senate floor action on major legislation has been governed by formal unanimous consent agreements. In the modern Senate, the majority leader seeks unanimous consent to bring a bill to the floor and often seeks consent to structure debate and action on amendments. In the absence of general rules limiting debate and amendments, unanimous consent is the only way to go. The leader could seek cloture on every bill, thereby limiting debate and nongermane amendments, but this is a cumbersome and inflexible procedure. So a simple request for unanimous consent is the standard approach.

The leader's dependence on unanimous consent to lend some order to floor activity also means that a single senator can upset the leader's plans. Consequently, the majority leader consults with the minority leader and other interested senators before seeking consent on all but the most routine questions. In recent decades, this process of soliciting and recording objections has become institutionalized--well-understood routines are in place for senators to register objections, reservations, and concerns about requests to take up bills, nominations, and even treaties. The registered objections are known as holds, reflecting their potential effect on legislation.

These rules and practices have not always posed a big problem for floor leaders. As recently as the early 1960s, senators did not pursue or threaten filibusters with much frequency. They tended to reserve the filibuster for the very most important issues. For southerners, this meant using the filibuster on civil rights legislation and some labor legislation, but little else. With little real threat of a filibuster to back it up, senators did not use holds with much frequency or effectiveness.

The political world in which the Senate operated in the 1950s was much different than today's world. The changes, Richard Fenno neatly summarizes, reflect a shift from a communitarian Senate to an individualistic Senate. In the communitarian Senate, the incentives governing individual behavior were structured internally, reinforced by strong and frequently conservative committee chairs, and manifested in recognized norms of apprenticeship and deference to senior members and committees. No inner-club may have ruled the Senate, as some claimed, but the Senate usually behaved as if one did.

By the late 1960s, many changes in congressional politics peeled away the insulation of the communitarian Senate. The litany of related changes is familiar--mass movements forced congressional action on a number of issues and provided causes for junior senators to champion, organized interests proliferated and placed more demands on senators, campaigns became more expensive and time-consuming, casework demands intensified, the ease of travel and speech-making opportunities drew senators away from Capitol Hill, and the congressional workload increased.

Quite naturally, senators took advantage of the many opportunities that their new environment created. They demanded and received the committee and subcommittee assignments, staff, travel funds, and office technology that allowed them to do so. Daily priorities were shaped more by personal agendas--campaign needs, interest-group demands, personal staff, obligations to meet constituents, and off-the-Hill speeches--and less by the expectations of colleagues and the needs of the Senate colleagues. And senators became quite sensitive, even hyper-sensitive, to public opinion as constituency mail, polling, and media reports increased in importance. Extreme individualism is the result.

The "Tough Guy" Solution

The external orientation of many senators has produced a fundamentally different situation on the Senate floor than the one faced by Lyndon Johnson in the 1950s. Pressed by constituencies and lobbyists and more strongly motivated to grab a headline, senators now more routinely and more fully exploit their procedural prerogatives than at any other time in the Senate's history. Filibusters, nongermane amendments, and holds are now threatened and employed with a frequency that would have shocked any senator of a generation ago.

Some numbers help to illustrate the point. Familiar to everyone is the dramatic growth of filibusters and threatened filibusters. The pattern is reflected in the number of cloture motions. As Majority Leader Mitchell indicated before the Joint Committee on the Organization of Congress, the 1919-1970 period saw a total of 50 cloture votes--less than one a year. The 1971-92 period saw 295--more than 13 a year. The 102d Congress, 1991-92, set a record with 48 cloture votes. Obstructionism has become even more objectionable as objections to the motion to proceed have increased. In 1977 through 1982, only six cloture votes on the motion to proceed took place; in 1991 and 1992, 35 cloture motions on the motion to proceed took place. Hidden beneath these numbers is an expanded use of holds, many of which do not ultimately prevent floor action but rather delay action and greatly complicate floor scheduling.

Modern obstructionism reflects the willingness of senators to fully exploit their parliamentary rights on matters of only parochial importance. The majority leader is forced to conduct extended negotiations with the minority leader and sometimes more than a dozen senators just to get a routine reauthorization bill before the full Senate. The length to which many senators are willing to go to gain leverage with bill sponsors, the leadership, or even the administration is revealed in the complexities of unanimous consent agreements.

In a search of LBJ's unanimous consent agreements in the 88th Congress (1959-60), I could find non-routine agreements that structure debate or amendments in some way for only one measure for every 14 given consideration on the Senate floor. Most bills required no agreement because debate and amending activity was fairly limited and predictable. In the 102d, poor George Mitchell found it necessary to provide some agreement for about 1 out of every 4 bills, and that excludes the many more agreements concerning the budget rules, conference reports, and cloture motions that LBJ seldom had to fuss with.

The majority leader's condition is reflected in the unanimous consent agreements he must negotiate. Floor leaders have spent an ever-increasing amount of time negotiating long, multi-amendment, multi-bill, contingency-filled, loop-hole closing agreements that make the Internal Revenue Code seem simple. The agreements represent the effort of the majority leader to lend some predictability to floor action, expedite final action on bills by preventing obstructionism whenever possible, minimize the effect of a filibuster on the consideration of other legislation, and juggle several pieces of legislation on the floor simultaneously--all while being sufficiently accommodating to gain unanimous consent.

Muscle-flexing by rank-and-file senators also is exhibited in the modern use of holds. The vitality of holds continues to bewilder senators and outsiders alike. For 15 years now I have heard complaints that the majority leader simply needs to ignore holds and press ahead. It is said that beating down one or two holds will teach the Senate a lesson and halt the abuses.

Recent majority leaders--four in a row--have announced that holds are not binding on the leader and represent nothing more than a request for advance notification of floor action. These pronouncements have made little difference. Despite their frustrations with holds, all four leaders found it convenient to observe holds most of the time. Why?

For one thing, the incentives for senators to abuse their parliamentary prerogatives continue to increase. Contributors, lobbyists, key constituency groups, and even the administration continue to reward senators who do their bidding. And the Senate's ideologues care little about inconveniencing their leaders and colleagues. An edict from the majority leader does not change this condition. Teaching the Senate a lesson by forcing action against the will of a senator or two is likely to be a lesson that lasts only a few days.

We must keep in mind that the majority leader still must gain unanimous consent for the most routine actions. Alienating a few senators by ignoring their holds may cost too much in subsequent cooperation to be worth the effort. In any event, with the help of the current rules, time constraints have become so severe, that the majority leader cannot afford to prove a point too often. Appeals to colleagues to resist temptation have not, and will not, work.

What we can expect is more of the same. This seems to be the conclusion that Majority Leader Mitchell has drawn as well. The poor man is now given to regular outbursts of frustration, as were his predecessors, about the flow of business on the floor. Typical were his comments on May 5--just two weeks ago--after a day of no progress on the lobbying reform bill:

...it had been my hope that we could complete action on all matters relating to this bill, other than the amendments to be offered by Senator Stevens, by the close of business today, and that we would have the amendments by Senator Stevens tomorrow. Senator Stevens is necessarily not able to be here today. He has been on a trip to Russia as part of an important function on behalf of the Senate, and accommodating his schedule is certainly appropriate, indeed necessary, given the importance of the mission which he and other Senators have undertaken.

It has turned out that not only have we been unable to complete everything else but the Stevens amendment, the opposite has occurred. In 2 days, we have been able to complete nothing, except for the disposition of the Wellstone amendment, by agreement, without a recorded vote. Therefore, all remaining matters, as the agreement just obtained makes clear, will occur tomorrow.

He continued:

The reality is that getting anything done in the Senate now has become extremely difficult, and the propensity, the tendency, the growing pattern of offering amendments that are not related to the pending bill is increasing. I think what we saw this evening was a dramatic example of that. The ability to offer amendments unrelated to the bill provides all Senators an outlet to have the issue that they are concerned about raised, if it is not otherwise to be raised.

But here we are, knowing that we are going to take up campaign finance reform in just a few days, that having been publicly stated on many occasions, knowing that this bill has nothing to do with campaign finance reform; and we are confronted on this bill--we are confronted until we just obtained this order--with amendments relating to campaign finance reform. What conceivable motivation could a Senator have to offer an amendment on campaign finance reform to this bill, knowing that the campaign finance reform bill is coming up in just a few days? The answer to that is obvious, and I will not belabor the point.

Since I became majority leader, I have made a truly determined effort to accommodate the interests and schedules of every Senator. The number of votes has been reduced; the number of days in which we are in session has been reduced; the predictability of votes has been dramatically increased, and I have tried very hard to accommodate every single Senator, without regard to party. But I want to say to my colleagues that it is becoming increasingly evident to me that the schedule which we have followed cannot be continued. The schedule which I announced to accommodate Senators with families--and that is a legitimate concern, especially the Senators with young children-- was that we would not vote after 7 p.m. on Tuesdays and Wednesdays. But that assumed that we would be voting prior to 7 p.m. This is a Wednesday, and we have reached 7 p.m., and there have been no votes. Well, obviously, if we cannot vote before 7 p.m. and we cannot vote after 7 p.m., we cannot ever vote.

And the result is that it takes several days to enact legislation or to act on legislation that ought to take several hours.

The bottom line: A changing political context has made dysfunctional many rules and practices that once seemed well adapted to senators' individual purposes and the Senate's collective needs. Senate majority leaders have kept the Senate a barely functional institution through extraordinary creativity and perseverance. But they have not been able to keep up.

Modest Proposals for Reform: The Senate

I have no delusions about how much good procedural change will accomplish. I favor campaign finance and electoral reforms that would reduce incentives to exploit every small procedural advantage on behalf of some outside audience. But procedure can be improved to reduce the unpredictability and petty obstructionism that has come to characterize Senate floor action.

The problem is limiting the excesses of individualism and minority obstructionism without undermining opportunities for deliberation and the unique role of bargaining in the Senate. The Senate, of course, has seen fit to limit debate and amendments in certain areas. The Senate limits debate and amendments to budget and fast-track trade measures, for example. The approach that I favor retains the ability of a large minority to block action on a measure and the ability of Senators to offer nongermane amendments, but seeks to make Senate floor action somewhat more predictable and orderly.

Before making some new suggestions to achieve a better balance, let me first note a few reforms proposed in the recent past that should be adopted. Two sets of proposals offered by Senator Mitchell in January 1993 should be adopted.

1. The Senate should reduce the number of opportunities to filibuster to three --initial debate on a measure and amendments thereto, debate on a consolidated motion to go to conference, and debate on a conference report.

Nearly every review of Senate rules has yielded a recommendation to limit debate on the motion to proceed. The idea has been supported by senators of both parties. The premise is simple: If senators want to block action on a pending measure, they should filibuster the measure itself.

Motions to proceed are generally debatable under the current rules, allowing senators to filibuster the majority leader's effort to bring up a bill for floor debate. Motions to proceed are nondebatable only if offered during Morning Hour following an adjournment or if offered on certain privileged matters, such as conference reports. The Morning-Hour option has not proven to be viable.

The Senate should adopt Majority Leader Mitchell's proposal for a two-hour limit on the consideration of a motion to proceed offered by the Majority Leader or his designee. The limit should apply to total consideration so that intervening quorum calls, motions, and points of order cannot extend the time devoted to the motion to proceed.

More controversial is Senator Mitchell's proposal to consolidate from three to one the number of motions that are required to go to conference. Currently, the Senate must approve a motion to disagree with House amendments, a motion to request a conference,

and a motion to authorize the presiding officer to appoint conferees. Each of these motions is debatable and so may be filibustered.

If adopted, the new rules would allow filibusters during consideration of a measure, on the motion to proceed to conference, and on the conference report. Three opportunities to filibuster are sufficient to protect minority rights.

2. The Senate should take further steps to eliminate dilatory action after cloture has been invoked.

The Senate's 1986 move to limit debate to 30 hours after cloture has been invoked greatly improved post-cloture action. Further steps would help the Senate move without delay to acting on the remaining amendments and bringing the measure to vote on passage. The Senate should adopt Senator Mitchell's proposal to discourage quorum calls by counting them against the one hour granted to the senator noting the absence of a quorum.

The Senate should also adopt Senator Mitchell's suggestion, which has been proposed on many other occasions, that a three-fifths majority be required to overturn a ruling of the chair. This is most important during post-cloture debate, where, under the current rule, a simple majority can vote to overturn a ruling that an amendment is nongermane. This has the potential effect of undermining the germaneness requirement that is imposed with cloture by a three-fifths vote.

I offer four modest proposals that complement Senate Mitchell's recommendations.

3. The Senate should allow a simple majority to temporarily structure the consideration of amendments on the floor.

First, the Senate should create a "straight-track" procedure for Senate floor action to limit debate and non-germane amendments for limited periods of time. The Senate would move onto the straight track upon the adoption of a nondebateable motion, offered by the majority leader or his designee, that is approved by a simple majority. When debating a measure on the straight-track procedure, the Senate would

- (1) conduct general debate, fixed by rule (say, one hour to each side),
- (2) consider legislation for amendment by title or section,
- (3) allow only relevant amendments,
- (4) limit debate on amendments (say, one hour to each side), and

(5) limit debate on a debatable procedural motions, points of order, or appeals to 30 minutes or less.

I would allow the Senate, when on the straight track, to further restrict debate or amendments by majority vote.

On a non-debatable motion, subject to majority approval, the Senate would return to existing rules. If the committee of origin is proposing an amendment in the nature of a substitute, a vote of a simple majority would make the substitute original text for purposes of amendment so that the substitute would be considered for amendment by section. I would not allow the Senate to adopt a complete substitute that would foreclose further amendments when operating on the straight track. I would provide that the Senate move from the straight track and to third reading if no Senator wants to offer an additional amendment. And I would not allow the Senate to conduct a the third reading of a measure on the straight track.

Before or after the Senate considers legislation on track Senators' current rights would be preserved. And yet most debate on legislation would occur in a more controlled and predictable setting. Nothing would prevent cloture from being invoked before or after the consideration of legislation on straight track.

I suspect that most Senate debate and amending activity would occur within the committee of the whole. Moving to and from the committee of the whole would occur by unanimous consent most of the time. For most bills, the majority leader would seek and gain unanimous consent in advance to move into committee of the whole at a time certain or at his discretion (after consulting the minority leader). Of course, debate and amendments in the committee of the whole also could be waived or supplanted by unanimous consent so that all of the flexibility of current practice is retained.

When on straight track, Senate floor activity would have far more predictability and would be far more efficient. The majority leader would no longer be prevented from moving to some structured debate and amending activity by objections from individual Senators or minorities.

My proposal does not materially reduce the ability of minorities to have their views heard. And it retains the full flexibility of modifying standard procedure by unanimous consent. But the straight-track procedure would substantially reduce obstructionism to routine debate and amending activity.

4. The Senate should adopt a less-than-unanimous-consent rule for the adoption of certain requests.

✦ The Senate should reduce the bite of holds by making it more difficult for a single

Senator to object to a floor leader's request to call up a measure, limit debate, or limit amendments. The objections of at least five Senators should be required in order to block such a request. If this were done, along with curbs on obstructionist quorum calls, the disruption caused by petty, personalistic uses of holds would be reduced.

One potential objection to such a rule is that Senators would have no trouble finding colleagues to support their holds. Hold-trading may become a refined art. Perhaps. The key feature of this rule is that it would force the Senator seeking to block action to disclose his or her identity and convince at least a few colleagues that the cause is worthwhile.

Such a "less-than-unanimous-consent" rule is better than the most obvious alternative--simply requiring that the identity of Senators placing holds on legislation be disclosed. I fear that any formal disclosure rule would recognize a right--the right of a single Senator to block action--that does not currently exist in the standing rules. It would formalize what is now an undesirable party practice. In any event, I am not sure that any formal rule could effectively guarantee that a floor leader would accurately identify the source of a hold.

5. The Senate should adopt an annual agenda that would give a legislative right-of-way to the listed measures.

In addition to, or perhaps in place of, the straight-track procedure, the Senate should adopt a resolution at the start of each year's session that establishes a Senate agenda. (This resolution might supplement the concurrent resolution on the congressional schedule that I recommended above.) Floor debate on legislation listed on the agenda would be subject to debate limits and a prohibition on non-relevant amendments. Specifically, items on the agenda would be subject to a nondebatable motion to proceed offered by the Majority Leader. The motion may include additional restrictions on debate and would be subject to a simple majority vote. Such limits might be similar to the current limits for budget resolutions and reconciliation measures.

The purpose of the agenda would be to identify those must-pass or consensus measures that most Senators agree should have a legislative right-of-way. By having a measure included on the agenda, its proponents could avoid obstacles caused by holds and nongermane matters that arise later in the session. And floor leaders would be advantaged in knowing well in advance how much time will be devoted on the floor to the consideration of the listed items.

Debate of the resolution providing for a Senate agenda would be subject to the current rules of the Senate. Consequently, the objections of a large minority of Senators could prevent action on the agenda or force a compromise version. But even a compromise version may expedite the consideration of many routine pieces of legislation

that currently fall prey to the last-minute tactics of Senators seeking leverage over floor leaders, a committee, or the administration. Measures not on the approved agenda would be considered as they are now.

6. The Senate should establish a standard time for conducting general debate on major legislation.

The Senate should adopt a standard time for conducting general debate on major legislation. Instead of leaving general debate to random points in the consideration of major legislation, the Senate should strive to provide more predictability and structure to the discussion of the general principles behind major legislation. By doing so, Senators would gain confidence in arranging their personal schedules and the public would know when to tune-in for a general discussion of legislation by the leading sponsors and opponents. Unanimous consent requests designed by the Majority Leader would be the best way to create such periods of general debate.

A Thought About Creating a Second Class of Filibusters

Norman Ornstein has proposed that the Senate create two classes of filibusters. Class I filibusters would be conducted under the current rules. He encourages the Majority Leader to do away with the two-track system that temporarily suspends debate on the filibustered measure so that other business can be conducted. He argues that the Majority Leader should force the Senators conducting such filibusters to maintain control of the floor--an old Mr. Smith-styled filibuster. If the filibustering Senators are serious, they should be compelled to endure ceaseless debate to make their point.

Class II filibusters are designed to allow a minority to only temporarily delay final action on a measure or amendment. Ornstein would require ten senators to file a petition to start such a filibuster. He would require 60 votes to invoke cloture on a first vote, 55 votes on a second vote that may occur a day later, and a simple majority on a third vote on the third and subsequent days. Such "filibusters" would allow a sizable minority to be heard without giving them an absolute veto over Senate action.

I am sympathetic to the purposes of the Ornstein proposal but I do not think that it will solve any problems. The intended distinction between the two classes of filibusters will be maintained only if the Majority Leader is willing to delay other business in order to force Class I filibusterers to retain the floor. If the Majority Leader allows Class I filibusters to be "tracked," there is little incentive for obstructionist Senators to go the Class II route. Indeed, the incentives for the Majority Leader to track a filibustered measure are strong. After all, the burden of around-the-clock filibusters under the current rules is heaviest on the proponents of the legislation because they must repeatedly muster quorums upon the call of the filibustering senators. And besides, the Majority Leader

Page 23 Smith Statement

may have very compelling reasons not to create of logjam of other important legislation. Thus, I see nothing in the Ornstein proposal that encourages the Majority Leader to change the current tracking practice.

Moreover, there is nothing in the proposal to prevent obstructionist Senators from shifting from a Class II filibuster to a Class I filibuster if they thought that cloture would be invoked under the Class II rules. And there is nothing to prevent an endless series of Class II filibusters on amendments that are offered so that there are targets for filibusters.

The Ornstein proposal clearly requires elaboration. I have a hunch that the Senate will conclude that one class of filibusters is enough.

STATEMENT BY PROFESSOR BARBARA SINCLAIR
UNIVERSITY OF CALIFORNIA, RIVERSIDE
JOINT COMMITTEE ON THE ORGANIZATION OF CONGRESS
MAY 20, 1993

Members of the Joint Committee: Thank you for inviting me to discuss floor deliberation and scheduling. You have heard other witnesses who are far more expert than I in the details of scheduling and floor procedure, so I will address broader questions and do so broadly, becoming specific only on selected issues. Because House and Senate floor rules and procedure are so different and the most salient criticisms leveled at them are also very different, I will treat the two houses separately.

On what criteria should we judge current arrangements and any proposed changes? Certainly we want arrangements that make efficient use of time and ones that promote sound decision making. The latter criterion is, obviously, the more important one but, given the enormous workload of the modern Congress, without reasonably efficient time use, sound decision making is not possible. Neither members of Congress nor scholars all agree on what constitutes sound decision making. The preeminent controversies over current procedures, in fact, reflect quite distinct notions thereof, as I will discuss below.

There does seem to be considerable consensus that sound decision making requires true deliberation and informed debate. Often the argument is made that both should take place on the floor of the chambers. I would argue that it is unrealistic to expect deliberation, as a great many people use the term, to take place on the floor of either chamber and certainly not in the House. If deliberation is defined as the process by which a group of people get together and talk through a complex problem, mapping the problems contours, defining the alternatives and, as part of the process, figuring out where they themselves stand (and that I think is what many people imply when they use the term), it is unrealistic to expect that to occur on the chamber floors. This is a non-linear, free-form process that depends on the size of the group being strictly limited; subcommittees and possibly committees are the forums where such processes might be fostered. What we can and should expect on the chamber floors is informed and informative debate.

If we cannot expect deliberation to occur on the floor and yet we agree that deliberation (if not quite in the idealized form described here) is necessary for good policy making, then sound decision making at the floor stage depends very heavily on what has happened to legislation before it reaches the floor, usually in committee. Sound decision making requires time, one of the scarcest commodities on the Hill; and the more one wants committee decision making to involve deliberation among members,

the more time it takes. You are looking at a great many proposals for improving committee decision-making, many of them aimed at providing more time and focusing members' attention. In considering questions about floor scheduling, the same concerns should be kept in mind, since the floor schedule and especially whether there will be votes determines when members will be in town.¹

The House of Representatives

Given the enormous demands on members' time, efficient chamber scheduling and time use is, of course, important to members' lives and also affects the likely quality of floor decision making. The House of the 1980s and 1990s tends to be in session fewer days per congress but significantly more hours per day than the House of the 1960s and 1970s.² From the 98th through the 102nd Congresses (1983-1992), the House was in session an average of 280 days per congress--it never reached 300 days-- and was in session an average of 6.2 hours per day. From the 87th through the 97th Congresses (1961-1982), in contrast, the number of days in session was over 300 per congress with one exception, the average was 321, and the average number of hours per day was 4.9 (a figure inflated somewhat by the high number of hours per day in the immediate post-reform 94th, 95th and 96th Congresses.)

The trade off between number of days and number of hours per day is pretty obvious and the change in the mix is a consequence of the party leadership's response to its members' wishes. However, the attempt by many members to compress all of their Washington duties into three or four days has certainly contributed to the perpetually frazzled state that many members report.

I would urge the Joint Committee to seriously consider recommending that the House experiment with the schedule of three weeks in Washington/one week in the district that the Senate is currently using. Say that a yearly session lasted 40 weeks (not counting the August recess). If the House were on the 3on/1 off schedule and were in session 5 days a week during the 'on' weeks, it would be in session 150 days a year; 40 weeks of being in session only 3 days a week yields 120 days.

This schedule would yield more days in session, providing much needed time for committee work (and connected time which is so much more valuable than the dribbles of time that trying to do too many things at once yield), and make long floor sessions less often necessary. And it would do that without reducing members' time in their districts in a major way; much of the extra time would come out of what is now travel time. This schedule would certainly be fairer to members' from district far away from

Washington; I shudder to think about the travel schedules of members from my state of California.

The leadership, of course, needs flexibility; special circumstances can and will arise that require modifications; some of these can be anticipated at the beginning of the year, others will necessitate last-minute changes; but such a schedule would work only if Monday and Friday sessions are not scheduled or are canceled only under truly extraordinary circumstances.

A major problem for the implementation of this scheduling change is the extraordinarily long primary season every other year. My colleague Steve Smith has suggested one federally prescribed primary day, preferably in September. Assuming members may be reluctant to do that, I would suggest at least trying the schedule in the first year of a congress. If it works well, it could be regularly used in non-election years, and, if members find it really makes a great deal of difference, they may be more willing to do what is necessary to make it possible to use it in election years also.

How time is used on the floor is, of course, of great importance. What constitutes a "waste" of time is very much in the eyes of the beholder. The House does consume significant amounts of time on recorded votes; during the 102nd Congress, the House took 932 recorded votes which, at 15 minutes each translates into 5.8 forty hour weeks consumed over the two years of the congress; (not all recorded votes are 15 minute votes, some are 5 minute votes; but, of course, 15 minute votes often are allowed to go on beyond their allotted time.) Still, the 102nd total is well below the high of 1540 reached in the 95th Congress, in the immediate post-reform era.

The Committee may want to look at nuisance votes and consider whether some further restrictions are appropriate. The motion to adjourn has, for example, recently been used for purposes not originally intended. If members perceive this to be really troublesome, various changes are possible. The Democratic freshmen have a proposal that deals with this matter. In general, members need to decide where the appropriate balance is. There may now be somewhat too much time devoted to recorded votes, but making choices and doing so on the record so that the public can hold them accountable is, after all, a central part of members' job.

These issues of time use, while important, are nevertheless secondary compared to the central question of whether and to what extent standard operating procedure on the House floor promotes sound decision making. In recent years, controversy has focused on the special rules used to bring significant legislation to the floor. Rules are much more likely now than in the past to place some restrictions on the amendments members may offer on the

floor; completely open rules allowing any germane amendment to be offered on the floor without prior notice decreased from 85 percent of all rules for initial consideration of legislation in the 95th Congress (1977-78) to 34 percent in the 102nd (1991-92).³ Minority party members have labeled restrictive rules anti-democratic and have claimed they are used to prevent the House from working its will. Yet, every rule is subject to approval by a majority of the House and very few rules are defeated on the floor (none in the 102nd).

Formal theorists in political science have shown that, for any bill of more than minimal complexity (technically, any bill involving more than one dimension of choice), there exists an alternative that can defeat it (and, of course, there then exists an alternative that can defeat that one ad infinitum).⁴ This result means that the legislators' preferences are not and cannot be the sole determinant of the legislative outcome because there is no single choice that a majority prefers to all others; the legislative outcome is also a function of the body's rules. Of course, these are results derived from an abstract mathematical model, but they often seem relevant to the complex choices members face.

Thus, rules inevitably advantage one sort of majority over another. The House is a majority rule chamber, but you must decide what sort of majority should rule and your only basis for doing so is your conception of what constitutes sound decision making. Specifically, should rules favor stable, organized majorities or transitory majorities that form on a piece of legislation (or a single amendment) today and dissolve when a different issue takes center stage tomorrow? If one believes that coherent policy is more likely to result from stable, organized majorities and that further stable organized majorities can be held accountable in a way free-forming, transitory majorities cannot, then one should not place constraints on the use of restrictive rules.

Complex and often restrictive rules have become powerful and flexible tools for managing the legislative process on the House floor. They make possible the consideration of some legislation--particularly multiply referred legislation--that ordinary House procedures have no real way of handling; the big energy bill passed in the 102nd is a case in point. Rules can provide order and predictability to the floor consideration of complex and controversial legislation; they can be used to assure that floor time is apportioned in a reasonably sensible way, both within a given bill and across legislation and that debate focuses on the major alternatives, not on minor or side issues. In addition, through the use of restrictive rules, committee compromises can be protected from being picked apart on the floor.

To understand the frequent use of restrictive rules and to see what would likely happen were they to be less available to the leadership, one need only examine the House of the mid and late 1970s. Enormous numbers of roll call votes--1500+ in the 95th Congress, frequent interminable sessions that went into the wee hours, members confronted with making large numbers of decisions under conditions of very limited information, numerous amendments offered solely for the purpose of putting members on the record on inflammatory issues, and the unraveling of carefully constructed committee compromises characterized those years.

One's conclusions about the appropriate form of special rules depend, as I argued above, on one's notions about what sort of majorities are likely to make better policy and therefore should be favored by the rules. They also depend on what sorts of decisions one believes can and cannot be made well on the House floor. The membership as a whole can and should make the big decisions; it can and should choose among the major alternatives that have been proposed. A body of 435 should not, I believe, get involved in a detailed rewriting of legislation on the floor via multitudes of individual amendments; it is too large and unwieldy, often the necessary expertise is lacking, almost always limited time precludes a full consideration of the impact of proposed changes. If one believes the membership as a whole can and should make the big decisions, then most rules should allow for the consideration of one or more major substitutes. In fact, most rules do just that. Closed rules are rare and are considerably less likely than modified open and much less likely than modified closed rules to provoke partisan controversy; in effect, closed rules are used primarily when there is a bipartisan consensus they are necessary.⁵

Placing significant limitations on the majority's ability to use rules creatively would make coherent, responsible policy making more difficult for the House.

The Senate

For at least the last 20 years, U.S. senators have complained about Senate scheduling and floor procedure. If current senators truly want more efficient time use, greater predictability and a better quality of debate on the floor, they must make some changes in Rule 22.

The Senate's special character as a highly individualistic body, one that gives the individual member enormous leeway is based upon unlimited debate (and, to a lesser extent, on rules that, in effect, allow senators to offer almost any amendment to almost any bill.) The power that each individual senator wields, of course, makes the office a very attractive one but, when an appreciable proportion of senators actually use their

prerogatives, the result is often extreme inconvenience for almost everyone. More importantly, it results in a legislative body that often has severe difficulties making legislative decisions on contentious issues. The powers of the individual in the Senate, after all, are much more easily and effectively used to stop something from happening than to make something happen. The party leaders' deference to individual senators--even at the expense of inconveniencing a majority--rest on their knowledge that one disgruntled senator can upset all their plans for positive action.

Research on the Senate of the 1950s and before indicates that, at that time, norms limited the extent to which senators exploited the powers rules gave them.⁶ Furthermore, when floor time was more plentiful, filibuster threats had much less impact.⁷ In the 1960s and 1970s, the Senate underwent a transformation; senators made increasingly expansive use of their powers and the current situation is the result.⁸

What should and can be done? Certainly, the set of routines and customs surrounding 'holds' needs to be reexamined. Specifically, the custom of allowing a senator to place a 'hold' on a piece of legislation anonymously seems highly questionable. If a given senator is blocking legislation (or an appointment) from coming to the floor, he or she should be publicly accountable for that. Relatedly, a number of observers and some senators have argued that the party leaders probably should be a little more willing to follow up on their own claim that holds just require notification, that they are not vetoes. The threat of a filibuster is what underlies 'holds' but, the argument goes, in many individual cases, this is likely a bluff. Similarly, party leaders, it is argued, should defer less to individuals in legislative scheduling and floor time use when such deference comes at the expense of inconvenience to everyone else.

I have myself made such arguments in the past, but I am increasingly unconvinced by them. A 'fix' that relies upon senators self restraint is unlikely to have much effect because the incentives and pressures on senators to renege on such an implicit bargain are just too great. How can a senator justify to an intensely interested constituency, often one that is his regular ally and strong supporter, his refusal to use his prerogatives fully on their behalf today when he cannot be sure other senators will act with like restraint tomorrow? Party leaders in the Senate defer so much because they have to.

Possible changes in Rule 22 range from the modest to the radical. Certainly making the motion to proceed non-debatable would fall on the modest end of the scale and, yet, would be helpful. My colleague Steve Smith has a "straight track" proposal that I urge you seriously consider. It does not directly tamper with the right of unlimited debate, it simply

gives the body a way of considering a given piece of legislation under procedures that are more orderly and predictable than current Senate procedure.

A somewhat more radical proposal would change Rule 22 so that the longer a measure is debated on the floor, the smaller the supermajority needed for cloture. If one's argument for current procedures is that a large minority should be able to block legislation, that one should, in effect, privilege the status quo, then this change is, of course, unacceptable. If, however, one justifies current procedures by arguing that a large minority should have time to publicize and attempt to raise public opposition to a proposal it believes unwise, then such a change makes sense. It gives the minority the floor time to make its case, but does not allow it to block action on majority-supported legislation forever. Certainly there would have to be safeguards to ensure the minority actually got the floor time; that simply elapsed chronological time would not trigger the decrease in the numbers needed for cloture. And, of course, there is much room for discussion over the details--after how much time would the number of votes needed for cloture decrease and by how much.

Unless some significant changes are made, considering the fine points of legislative scheduling and floor time use in the Senate is just not very useful because the party leaders will not be able to implement any significant reforms. They currently lack the control necessary to significantly increase predictability and efficient use of floor time. And the consequences extend beyond member inconvenience. Both senators and outside observers agree that Senate floor debate has deteriorated. The Senate now can rise to great heights and conduct a debate that rivets the public's attention, that informs, educates and even entertains. It is the quality of routine debate that is a problem and improving that depends on greater predictability and more orderly floor procedure.

Of the multitude of issues one might address under the rubric of scheduling and floor deliberation, I have discussed only a few. I want to mention why I chose not to discuss the set of issues concerning the setting of a party policy agenda and the laying out of a yearly schedule of target dates for the consideration of major legislation. I believe these are very important issues and I have, in fact, addressed them elsewhere. However, The House Democratic Caucus at the beginning of this congress created an entity charged with developing a legislative agenda for the party. Furthermore, the agenda setting enterprise is very different for a majority party which controls the White House. Until we see how things work under the new set of arrangements and circumstances, it seems gratuitous to make further suggestions.

Conclusion

You are charged with proposing a set of reforms that will improve the functioning of two very complex institutions--institutions that we expect to perform a number of not totally congruent functions. Considering explicitly if briefly just what it is we expect of Congress is useful because doing so reminds us of the overarching criteria that should guide the reform effort and makes clear the limits of the possible. We expect Congress to represent; we expect members to bring into the legislative process the views, needs and desires of their constituents and we expect the Congress as an institution to provide a forum where the full range of views is expressed. We also, of course, expect Congress to make decisions -- to pass laws. Congress, we say, should pass laws that reflect the will of the people; that is, Congress should be responsive to popular majorities. Congress, we also contend, should pass laws that deal promptly and effectively with pressing national problems. These two criteria, which can be labeled responsiveness and responsibility, are distinct. Only in a perfect world would what the majority wants always accord with what policy experts or various groups of members deem most likely to be effective -- especially in the long run.

In institutional design terms, the requisites of representation, responsiveness and responsibility are different. A decentralized, open, permeable body in which individual members have considerable resources and autonomy of action furthers representation; such a body has great potential for articulating the broad variety of opinions and interests in our society. A more centralized, hierarchical body is more capable of expeditious decision making. Structures and processes that insulate members from public pressures promote responsibility while those that subject members to close public scrutiny further responsiveness. Representation takes time, especially when there are a great variety of viewpoints; by definition, lawmaking requires closure, an end to debate and, implicitly or explicitly, a choice among competing alternatives.

The tension among the values of representation, responsiveness and responsibility does not doom us to sacrificing some of our values entirely to realize others. Appropriate decisions about institutional design and processes of education, deliberation and compromise which institutional design can further can make possible in most circumstances an acceptable balance among them. But whether considering questions of institutional design or evaluating member behavior or outcomes, it is essential to remember that we can't have it all. All three values cannot be maximized simultaneously.

In the case of the House of Representatives, the current system offers a far better solution to the dilemmas of

organizational design than the committee government system of the pre-reform era. Often held up at least implicitly as the good old days, the pre-reform House, in fact, was deficient according to all three criteria. By operating in large part behind closed doors and limiting the participation of rank and file members, the House restricted its capacity for representation, especially of interests without powerful connections. The dispersion of legislature decision-making authority among a number of largely autonomous committee chairmen who were unrepresentative of the majority party and the lack of mechanisms by which the majority party could hold the chairs accountable severely limited the House's capacity to pass legislation responsive to the will of popular majorities, at least as that will is expressed in elections. Meager staff resources and limited access to independent information handicapped the House, limiting its ability to craft effective legislation for dealing with pressing national problems. On each of the criteria, I would argue, the current system comes out better. While the current Senate is beset with some serious problems, the Senate of the 1950s and before is no model to emulate; it suffered from many of the same disabilities as the pre-reform House. And most of the Senate's current problems were not caused by the reforms.

I bring this up because the unforeseen negative consequences of the last reform era are so often emphasized to the exclusion of its accomplishments. Certainly you need to remain aware that when complex institutions are at issue reforms can have unforeseen consequences and that these may be negative. But it is possible for human beings including members of Congress to change the institutions in which they work in a beneficial way.

Endnotes

1. The committee might consider addressing the problem of poor attendance at committee meetings directly as well. As Mann and Ornstein suggest, take attendance at committee meetings (at mark-ups certainly and perhaps also at major hearings); I would add: do so in such a way that members cannot just pop in, get their names on the list of attenders and leave again; and make that information easily available. If floor voting habits are any guide, attendance will improve immensely.

2. Figures are from Ornstein, Mann and Malbin, Vital Statistics on Congress 1991-1992 (Washington, D.C.: American Enterprise Institute, 1992), p.151.

3. A Mandate for Change in the People's House Republican House Rules Substitute, 103rd Congress, January 5, 1993. Table 4.

4. For an accessible review of this literature, see Keith Krehbiel, "Spatial Models of Legislative Choice", Legislative Studies Quarterly (August 1988).

5. My study of rule design and rule choice on major legislation during the 100th and 101st Congresses found that of the total 71 rules only 9 were closed. One third of closed rules were approved by a party vote (a vote on which a majority of Democrats voted against a majority of Republicans), the rest provoked no such controversy; in contrast, 44% of modified open rules and 75% of modified closed rules were approved on party votes (as were 22% of open rules).

6. Donald Matthews, U.S. Senators and their World (New York: Vintage Books, 1960).

7. Bruce Oppenheimer, "Changing Time Constraints on Congress: Historical Perspectives on the Use of Cloture" in Lawrence C. Dodd and Oppenheimer, ed., Congress Reconsidered, 3rd ed., (Washington, D.C.: Congressional Quarterly Press, 1985).

8. Barbara Sinclair, The Transformation of the U.S. Senate (Baltimore: Johns Hopkins University Press, 1989).

BILL EMERSON
MEMBER OF CONGRESS
8TH DISTRICT, MISSOURI

HOUSE COMMITTEE ON
AGRICULTURE

HOUSE COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION

SELECT COMMITTEE ON HUNGER

Congress of the United States
House of Representatives
Washington, DC 20515-2508

OFFICE:
SUITE 2454
RAYBURN BUILDING
WASHINGTON, DC 20515-2508
202/225-4404

THE FEDERAL BUILDING
338 BROADWAY
CAPE GIRARDEAU, MO 63701
314/325-0101

812 PINE
ROLLA, MO 65401
314/384-2468

STATEMENT OF REPRESENTATIVE BILL EMERSON
BEFORE THE
JOINT COMMITTEE ON THE ORGANIZATION OF CONGRESS
May 25, 1993

Mr. Chairman and Members of the Committee:

Once again, I appreciate your indulgence in hearing me from the other side of the witness table. My goal today is not to offer the be-all, end-all solution to our scheduling problems, but to ensure that this topic remains on the table for discussion.

One of the recurring themes in the testimony this Committee has heard so far is the frustration Members experience with their schedules. I believe that many of the reform proposals that we have heard so far stem from this frustration. I do not believe we would be talking about reducing the number of committees or the number of committee assignments per Member unless Members were unhappy with their inability to be everywhere they are scheduled to be at one time. We would not be complaining about too much reliance on staff and not enough reliance on the expertise of individual Members if we were not faced with the phenomenon of what Senator Byrd terms, "fractured attention." Our "fractured attention" is largely the result of scheduling problems. We would not be decrying the need for more deliberation and discussion on the Floor if we had more time to spend on the Floor -- thinking about issues, listening to debate, and formulating arguments.

Scheduling improvements will be integral to the success of the solutions we propose to other problems as well. For example, many Members have suggested a series of "Oxford-style" debates to counter the lack of deliberation on the Floor. No matter how well these debates are crafted, they will not succeed if Members are scheduled so tightly that no one can attend.

In addition to reducing the frustration level of the average Member, scheduling reform is needed to inject some predictability into the legislative process. The Congress' inability to make a schedule and stick to it has serious economic consequences which are reflected in the decision-making processes of thousands of businesses across the nation. Instead of making sound, carefully considered economic decisions, businesses are often forced to join in the "will-they-or-won't-they-and-when" game and try to second-guess congressional action -- or inaction, as the case may be.

I propose that we address these scheduling problems by doing two fundamental things: first, proceed with fundamental reform of committee structure. We do need to reduce the number of committees and subcommittees, and we do need to cut back on

the number of assignments per Member. Second, we must acknowledge the fundamental reality that Members cannot be in two places at once. If we want to encourage better debate on the Floor of the House and encourage committee attendance and participation, the two cannot be scheduled simultaneously. Perhaps we should have two to three weeks of committee work, during which time the full House will not meet. Then, for the next week, the House could meet to dispense with the matters that the committees have just reported. When the House is in session, the committees would not meet.

When Senator Byrd testified on February 2 of this year, I asked his opinion of this idea. He replied that in theory, it is a great idea. In his experience, however, he did not believe that it would work. Absent a threat of votes, the Senator told us that he found it difficult to keep Senators in Washington. This is a very real obstacle under our current system. Last week, however, two scholars appeared here and offered a solution to that problem: we should publish committee votes.

Currently, votes from most committees are technically available to the public, but from the testimony of Professor Smith last week, it sounds to me that the task of digging out the records can sometimes require the determination of Sisyphus. We should make it easier for the public, the press, and anyone else to find out who votes for what in committee. If Members were held accountable for their votes, there would be as much incentive to attend committee meetings as there is now to be present for votes on the House. This change must go hand-in-hand with the elimination of proxy voting -- we don't have it on the Floor of the House, and as a result, Members make an effort to attend most votes. The House also has several committees which do not allow proxy voting; Rules and Veterans Affairs come to mind. These committees seem to work just fine. In fact, the Veterans Affairs committee routinely has an 85 percent to 90 percent attendance rate, as Chairman Montgomery stated in testimony before this Committee.

We also need to make the most of the time that we do have, and this includes beginning work in January when we arrive, and working full five-day weeks. We should devote time to oversight alone; perhaps there should be six months of the year devoted primarily to legislating and six months devoted primarily to oversight. Or it could be one year to legislating and one year to oversight. The length of time is not as important as the fact that the Congress would be conducting strict oversight of the programs and projects we have already enacted.

We should also study emerging technology; there must be a means of creating a master schedule which will minimize conflicts -- after all, major universities manage to schedule classes for tens of thousands of students; if they can do it, why can't we? Some conflicts are bound to exist, but when we try to squeeze five days' work into three days, particularly between the hours of 10:00 and 2:00, we are maximizing the potential for schedule conflicts.

If the House: (1) reduces the number of committee and subcommittee assignments per Member; (2) publishes committee votes in a readily accessible manner; (3) eliminates proxy voting; and (4) adopts a schedule where committees and the full House meet at separate times, I believe we will see significant results. Members will have fewer personal schedule conflicts; committee attendance will improve, resulting in more expertise among Members and ultimately in a better legislative product; and Floor deliberation will become more meaningful than the mere reading of prepared statements that is all too common today. Scheduling reform will go a long way toward making Congress not only more efficient, but more effective.

Again, I appreciate the opportunity to raise this issue before the Committee today. I'll be happy to answer any questions you have now, and I will look forward to discussing this matter with this Committee in the coming months.

TESTIMONY OF SENATOR JIM EXON (D-NE)
BEFORE THE
JOINT COMMITTEE ON THE ORGANIZATION OF
CONGRESS
WASHINGTON, D.C.
MAY 25, 1993

MR. CHAIRMAN, I APPLAUD YOU AND
YOUR COLLEAGUES AS YOU UNDERTAKE THE
WORK OF THE JOINT COMMITTEE ON THE
ORGANIZATION OF CONGRESS. YOU HAVE A
HUGE TASK TO PERFORM BUT A VERY
NECESSARY ONE. I PLEDGE TO WORK WITH
YOU TO MAKE OUR CONGRESS A BETTER
INSTITUTION AND TO RESTORE PUBLIC TRUST
IN IT.

REGARDLESS OF WHO SITS IN THE WHITE

HOUSE AND WHICH POLITICAL PARTY CONTROLS THE CONGRESS, THE HOUSE AND SENATE OVER THE YEARS HAVE OFTEN BECOME FORUMS FOR INACTION OR SLOW ACTION WHEN THE PEOPLE ARE DEMANDING THE OPPOSITE.

BY NATURE, LEGISLATIVE BODIES ARE DELIBERATIVE INSTITUTIONS. I DO NOT BELIEVE THAT SHOULD CHANGE BECAUSE WE HAVE A VERY IMPORTANT CHECK AND BALANCE FUNCTION WITH RESPECT TO THE EXECUTIVE BRANCH. HOWEVER, DELIBERATION IS ONE THING. GRIDLOCK IS

QUITE ANOTHER.

THE ABILITY OF A MINORITY, SOMETIMES EVEN A MINORITY OF ONE, TO DERAIL THE WILL OF THE MAJORITY HAS BECOME TOO COMMONPLACE. I BELIEVE IT IS TIME FOR REASON AND COMPROMISE TO REIGN SUPREME ONCE AGAIN IN THE UNITED STATES SENATE.

FOR THE RECORD, I CONCUR WITH THE SEVEN SENATE RULES CHANGES PROPOSED BY MAJORITY LEADER MITCHELL. THESE INCLUDE LIMITING DEBATE ON MOTIONS TO PROCEED; REQUIRING A THREE-FIFTHS VOTE

TO OVERTURN RULINGS OF THE CHAIR;
ALLOWING COMMITTEE-REPORTED
AMENDMENTS TO BE CONSIDERED GERMANE
POST-CLOTURE; COUNTING TIME CONSUMED
BY QUORUM CALLS DURING CLOTURE
AGAINST THE SENATOR WHO SUGGESTED
THE QUORUM CALL; ALLOWING THE SENATE
TO GO TO CONFERENCE WITH THE HOUSE
AFTER ADOPTION OF ONE MOTION RATHER
THAN THREE SEPARATE ONES; DISPENSING
WITH THE READING OF A CONFERENCE
REPORT; AND, FINALLY, PROVIDING FOR A
MOTION REQUIRING THAT AMENDMENTS BE

RELEVANT IF THREE-FIFTHS OF VOTING
SENATORS AGREE.

THESE SEVEN PROPOSALS ARE
REASONABLE AND, IN MY OPINION, PROTECT
MINORITY RIGHTS WHILE MOVING THE
PEOPLE'S BUSINESS FORWARD.

ADDITIONALLY, I WOULD LIKE TO PROPOSE
ONE OTHER CHANGE FOR YOUR
CONSIDERATION WHICH I BELIEVE WOULD
ACCOMPLISH THE SAME GOALS.

CURRENTLY AS YOU KNOW, IT TAKES
ONLY ONE SENATOR TO PLACE A "HOLD" ON
A BILL. IN MY VIEW, THIS TOOL HAS BEEN

USED FAR TOO OFTEN TO IMPEDE THE WORK OF THE SENATE. IN ORDER TO HELP THE SENATE CONDUCT ITS BUSINESS IN A MORE EFFICIENT MANNER, I PROPOSE THAT IT TAKE 16 SENATORS TO PLACE A "HOLD" ON A BILL RATHER THAN ONE.

JUST LAST WEEK, THE SENATE MAJORITY LEADER ADDRESSED THIS ISSUE. HE REITERATED THAT, ALTHOUGH SENATE RULES DO NOT MAKE ANY PROVISIONS FOR "HOLDS," BOTH DEMOCRATIC AND REPUBLICAN LEADERS HAVE DEVELOPED INFORMAL SYSTEMS BY WHICH SENATORS NOTIFY THEIR

LEADERS OF PROBLEMS WITH BILLS OR NOMINATIONS. THERE IS CURRENTLY A UNIFORM POLICY REGARDING NOTIFICATION OF SENATORS, UPON REQUEST, WHEN FLOOR CONSIDERATION OF A BILL OR NOMINATION IS BEING SCHEDULED.

HOWEVER, I BELIEVE THIS INFORMAL NOTIFICATION SYSTEM HAS BEEN ABUSED. EVEN THOUGH THERE IS NO SPECIFIC SENATE RULE PROTECTING THE RIGHT OF SENATORS TO PLACE "HOLDS," WE MAY NEED A NEW SENATE RULE TO STOP THE ABUSES WHICH HAVE TAKEN PLACE AND SEEM TO BE

OCCURRING MORE FREQUENTLY.

NOW IT TAKES 16 SENATORS TO SIGN A CLOTURE PETITION BEFORE IT CAN BE FILED. I BELIEVE THAT IT SHOULD TAKE THE SAME NUMBER OF SENATORS TO PLACE A "HOLD" ON A BILL, A FORM OF "REVERSE CLOTURE," AFTER A REASONABLE PERIOD OF TIME HAS ELAPSED TO ALLOW SENATOR'S ADEQUATE TIME TO HAVE THEIR QUESTIONS ANSWERED OR PARTICIPATE IN GENUINE CONSULTATIONS OF SUBSTANCE.

MR. CHAIRMAN, THE SENATE TIME AND AGAIN HAS BEEN TIED INTO KNOTS,

ESPECIALLY NEAR THE END OF THE SESSION, BY THE CURRENT ABILITY OF ONE SENATOR TO STOP A BILL FROM PROCEEDING BY UNANIMOUS CONSENT THROUGH THE THREAT OF EXTENDED DEBATE. WE HAVE SEEN A PROLIFERATION OF "HOLDS, COUNTER-HOLDS, RETALIATORY HOLDS AND SO-CALLED ROLLING HOLDS." I SAY THAT ENOUGH IS ENOUGH. IF THE LEADERSHIP IS WILLING TO MOVE AHEAD WITH LEGISLATION, THEN ONE SINGLE SENATOR SHOULD NOT BE ABLE TO STAND IN THE WAY. SOMETIMES THE MOTIVATION FOR THE "HOLD" HAS

NOTHING TO DO WITH THE SUBSTANCE OF THE LEGISLATION BEING "HELD."

IT IS IMPORTANT TO REMEMBER THAT, EVEN IF MY PROPOSAL IS ACCEPTED, OTHER EXISTING METHODS UNDER THE RULES WOULD STILL BE AVAILABLE TO STOP LEGISLATION OR NOMINATIONS FROM PROCEEDING.

NEVERTHELESS, IF WE CAN TAKE THIS ONE SMALL STEP, WE WILL HELP BRING ORDER OUT OF CHAOS. AGAIN, I BELIEVE THE RIGHTS OF THE MINORITY WILL BE FULLY PROTECTED.

I APPRECIATE BEING ASKED TO TESTIFY
BEFORE YOU TODAY, LOOK FORWARD TO
YOUR RECOMMENDATIONS AND STAND
READY TO ANSWER ANY QUESTIONS YOU MAY
HAVE.

FLOOR PROCEDURES AND SCHEDULING
STATEMENT OF SENATOR DAVID PRYOR
MAY 25, 1993

MR. CHAIRMAN, THANK YOU FOR GRANTING ME A SECOND OPPORTUNITY TO TESTIFY BEFORE THE JOINT COMMITTEE ON THE ORGANIZATION OF CONGRESS.

DURING THE 100th CONGRESS AND 101st CONGRESS, SENATOR DANFORTH AND I INTRODUCED FOUR SENATE RESOLUTIONS INTENDED TO ENHANCE THE EFFECTIVENESS AND EFFICIENCY OF THE SENATE.

OUR EFFORTS WERE OFTEN REFERRED TO AS IMPROVING THE QUALITY OF WORK. THE PROPOSALS SENATOR DANFORTH AND I PUT FORTH WERE DESIGNED TO ALLOW THE SENATE TO OPERATE MORE EFFICIENTLY, IN ORDER TO IMPROVE OUR WORK ON BEHALF OF OUR CONSTITUENTS.

MY CONCERN ABOUT SENATE FLOOR PROCEDURE AND SCHEDULING THEN, AS WELL AS NOW, IS THAT WE SIMPLY DO NOT SPEND OUR TIME WISELY. ALTHOUGH IN SOME RESPECTS, THE SENATE HAS IMPROVED SINCE SENATOR DANFORTH AND I FIRST EXAMINED THIS PROBLEM IN 1987, I THINK THAT THERE IS STILL ROOM FOR FURTHER PROGRESS.

LET ME FIRST DISCUSS THE CONCERNS THAT WE HAD IN THE 100th AND 101st CONGRESS, AND THEN I WILL ADDRESS AREAS STILL IN NEED OF FURTHER IMPROVEMENT.

SENATOR DANFORTH AND I INTRODUCED FOUR SENATE RESOLUTIONS IN 1987 WHICH WOULD HAVE AFFECTED THE WAY THE SENATE ALLOCATES ITS TIME, A POINT WHICH HAS NEVER BEEN THE SENATE'S STRENGTH.

THE FIRST RESOLUTION DEALT WITH THE SKYROCKETING NUMBER OF SENSE OF THE SENATE RESOLUTIONS AND SENSE OF THE SENATE AMENDMENTS. THE PROPOSED

IT IS MY UNDERSTANDING THAT THE SENATE JUDICIARY COMMITTEE NOW REQUIRES THAT ANY COMMEMORATIVE RESOLUTIONS HAVE FIFTY CO-SPONSORS BEFORE THEY WILL REPORT IT OUT OF COMMITTEE. I APPLAUD THAT MOVE, BECAUSE IT ENSURES THAT SENSE OF THE SENATE RESOLUTIONS THAT COMMEMORATE ACTIVITIES OR ISSUES HAVE WIDESPREAD SUPPORT BEFORE THE SENATE SPENDS FLOOR TIME ON THEIR CONSIDERATION.

WHILE SENSE OF THE SENATE RESOLUTIONS USUALLY TAKE THE FORM OF A COMMEMORATIVE, IT IS EQUALLY COMMON TODAY FOR SENSE OF THE SENATE RESOLUTIONS TO BE OFFERED AS FLOOR AMENDMENTS. THE PROBLEM OF TIME ALLOCATION IS MORE ACUTE IN REGARD TO THESE AMENDMENTS.

OFTENTIMES, THE SENATE SPENDS A CONSIDERABLE AMOUNT OF TIME DEBATING THE MERITS OF A SENSE OF THE SENATE RESOLUTION, WHICH BY DEFINITION WILL NOT CHANGE ANY SUBSTANTIVE LAW OR

RULE CHANGE WOULD HAVE MADE IT OUT OF ORDER TO PRESENT A SENSE OF THE SENATE RESOLUTION OR FLOOR AMENDMENT WITHOUT TWENTY CO-SPONSORS.

OUR RATIONALE BEHIND THIS PROPOSAL WAS THAT THE SENATE WAS SPENDING TOO MUCH TIME DEBATING THE MERITS OF SENSE OF THE SENATE RESOLUTIONS THAT HAVE NO EFFECT ON POLICY.

I REALIZE THE IMPORTANCE OF PUTTING THE SENATE ON RECORD REGARDING IMPORTANT ISSUES OF THE DAY, AND I STILL BELIEVE THAT TO BE IMPORTANT. MY PROPOSAL WOULD NOT HAVE CURTAILED THE RIGHT TO OFFER SUCH RESOLUTIONS AND AMENDMENTS, IT WOULD HAVE SIMPLY PUT A MINIMUM THRESHOLD OF 20 SENATORS BEFORE THE SENATE AGREED TO SPEND ITS TIME DISCUSSING SENSE OF THE SENATE RESOLUTIONS. IF SUCH RESOLUTIONS ARE ABOUT IMPORTANT ISSUES OF THE DAY, 20 SENATORS SHOULD, AND WOULD, BE WILLING TO CO-SPONSOR SUCH RESOLUTIONS.

EFFECT AVERAGE AMERICANS IN ANY FASHION. I STILL AM OF THE MIND THAT DEBATES OVER THESE AMENDMENTS TAKE UP TOO MUCH OF OUR TIME, AND THAT SUCH AMENDMENTS DETRACT FROM OUR PURPOSE AS SENATORS -- WHICH IS TO LEGISLATE.

THE SECOND RESOLUTION DEALT WITH THE MOTION TO PROCEED. THE PROPOSED RULE CHANGE WOULD HAVE LIMITED THE DEBATE ON THE MOTION TO PROCEED TO ONE HOUR, EQUALLY DIVIDED. I UNDERSTAND THAT SENATOR MITCHELL HAS DISCUSSED A SIMILAR PROPOSAL IN FRONT OF THIS JOINT COMMITTEE.

CURRENTLY, THE MOTION TO PROCEED IS DEBATABLE, AND INCREASINGLY WE ARE SEEING MORE FILIBUSTERS WAGED AGAINST THE MOTION TO PROCEED THAN ON THE BILL ITSELF.

IN THE LAST TWO CONGRESSES, WE HAVE SEEN A DRASTIC INCREASE IN THE NUMBER OF CLOTURE MOTIONS THAT HAVE BEEN FILED ON THE MOTION TO PROCEED.

IN THE 98th, 99th, 100th, AND 101st CONGRESSES, THERE WERE BETWEEN 10 AND 12 CLOTURE PETITIONS FILED ON THE MOTION TO PROCEED. IN THE LAST CONGRESS, THAT NUMBER JUMPED TO 35, AND IN THIS CONGRESS VARIOUS SENATORS AND GROUPS OF SENATORS HAVE THREATENED NUMEROUS TIMES TO FILIBUSTER THE MOTION TO PROCEED ON DIFFERENT PIECES OF LEGISLATION.

ONE OF THE FEW POWERS THAT THE SENATE GIVES TO THE MAJORITY LEADER IS THE POWER TO SET THE SENATE'S SCHEDULE. IT SEEMS REASONABLE TO ALLOW THE MAJORITY LEADER A PRIVILEGED MOTION TO PROCEED THAT CANNOT BE FILIBUSTERED.

SENATOR MITCHELL ADDRESSED THIS SUBJECT IN AN EARLIER HEARING AND I WOULD LIKE TO FULLY ENDORSE HIS THOUGHTFUL PLAN AND HIS REMARKS.

THE THIRD RESOLUTION ADDRESSED THE LAXITY REGARDING THE TIME OF ROLL CALL VOTES. THE 15-MINUTE ROLL CALL

VOTE WAS THE EXCEPTION, RATHER THAN THE RULE IN EARLIER CONGRESSES. MANY TIMES, VOTES WOULD TAKE UP TO 45 MINUTES FOR VARIOUS REASONS.

LAST CONGRESS AND AGAIN THIS YEAR, SENATOR MITCHELL ANNOUNCED THAT ROLL CALL VOTES WILL BE HELD OPEN NO LONGER THAN 20 MINUTES, SHORT OF SOME VERY UNUSUAL CIRCUMSTANCES. IT IS MY IMPRESSION THAT THE PROBLEM OF PROLONGED ROLL CALL VOTES HAS LESSENED UNDER THE ABLE LEADERSHIP OF THE CURRENT MAJORITY LEADER AND THAT THIS IS NOT A PROBLEM NECESSITATING FURTHER REFORM.

THE LAST RESOLUTION WAS COMPLEX AND CONTROVERSIAL. IT WOULD HAVE REQUIRED THAT AMENDMENTS ON THE SENATE FLOOR BE OFFERED IN THE ORDER OF THE SECTION OF THE TITLE OF THE MEASURE BEING AMENDED. IT ADDITIONALLY STIPULATED THAT THE TITLE OR SECTION OF THE BILL WOULD BE CLOSED TO FURTHER AMENDMENTS IF 20 MINUTES ELAPSED WITHOUT ANOTHER

AMENDMENT BEING OFFERED TO THAT SECTION.

THE REASON BEHIND THIS PROPOSAL WAS THE LARGE AMOUNT OF TIME THE SENATE WASTES IN QUORUM CALLS, USUALLY WAITING FOR SENATORS TO BRING THEIR AMENDMENTS TO THE FLOOR.

UNFORTUNATELY, THE SENATE STILL IS FACED WITH THE PROBLEM OF WASTING NUMEROUS HOURS IN REPEATED QUORUM CALLS. MOST EVERY DAY, WHEN I AM MEETING WITH CONSTITUENTS, TWO BELLS WILL RING, THEY WILL ASK ME WHAT IS HAPPENING, AND I WILL TELL THEM THAT THE SENATE IS TAKING A "TIME OUT." AS OFTEN AS I HAVE TO EXPLAIN "TIME OUTS" TO MY CONSTITUENTS, SOMETIMES I FEEL LIKE WE ARE AT A BASKETBALL GAME, NOT AT THE GREATEST DELIBERATIVE BODY IN HISTORY.

ALTHOUGH I AM NOT SURE THAT A SECTION-BY-SECTION READING OF THE BILL IS THE CURE-ALL TO THE PROBLEM OF QUORUM CALLS AND THE GENERAL WASTE

OF TIME ON THE FLOOR, I DO STRONGLY
FEEL THAT THIS PROBLEM SHOULD BE
ADDRESSED.

LET ME FINISH TODAY WITH A FEW
GENERAL COMMENTS ABOUT SENATE FLOOR
PROCEDURE AND SCHEDULING.

AS I STATED EARLIER, I BELIEVE THE
PROBLEM WE FACE ON THE SENATE IS THAT
WE DO NOT SPEND OUR TIME WISELY.

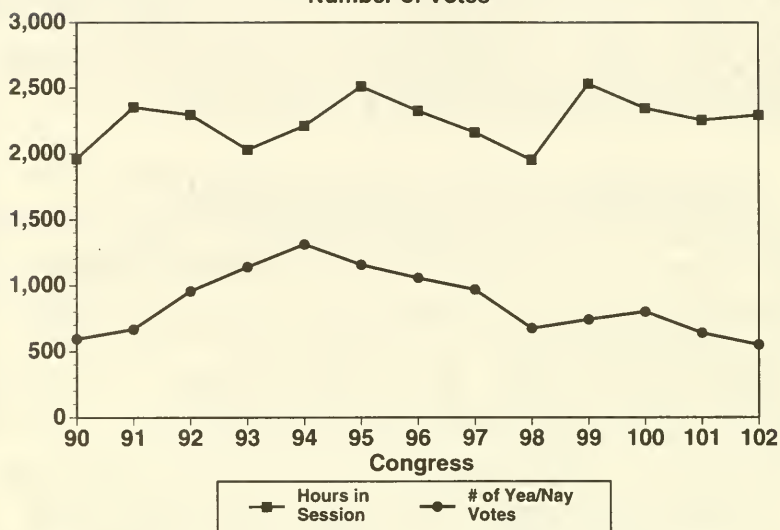
WE RUSH FROM COMMITTEE HEARING
TO COMMITTEE HEARING -- WE SPEND
HOURS IN QUORUM CALLS -- FILIBUSTERS
ARE NOW CONDUCTED ON ALMOST EVERY
PIECE OF LEGISLATION, NOT RESERVED FOR
THE RARE CASES WHERE SENATORS HOLD
EXTREME RESERVATIONS ABOUT A
MATTER -- HOLDS ARE PLACED ON NOMINEE
AFTER NOMINEE -- AND WE DEBATE THE
SAME ISSUES AND THE SAME AMENDMENTS
THREE TIMES ALMOST EVERY YEAR,
BECAUSE WE HAVE AN INEFFICIENT AND
DUPLICATIVE THREE STEP BUDGET PROCESS.

THIS PARALYSIS AND WASTED TIME ARE AS MUCH AS FUNCTION OF SELF-RESTRAINT AS THEY ARE FUNCTIONS OF SENATE PROCEDURES. VAST IMPROVEMENTS COULD BE MADE WITHOUT RULE CHANGES.

SENATORS COULD VOLUNTARILY RESTRAIN FROM FILIBUSTERS ON THE MOTION TO PROCEED AND REFRAIN FROM BLANKET HOLDS. SINCE ALL OF US USUALLY KNOW WEEKS IN ADVANCE THAT LEGISLATION WILL BE CONSIDERED, SENATORS COULD BE PREPARED TO PROPOSE AMENDMENTS TO LEGISLATION IN A TIMELY MANNER AND CUT OUT MOST OF THE QUORUM CALLS. SENATORS COULD REFRAIN FROM OFFERING THE SAME AMENDMENTS OVER AND OVER, WITH NO GREATER CHANCE OF PASSAGE FROM ONE VOTE TO THE NEXT.

ABSENT THIS SELF-RESTRAINT, IT IS APPROPRIATE AND NECESSARY FOR THIS COMMITTEE TO PROPOSE PRUDENT NEW RULES THAT BRING BETTER DISCIPLINE TO THE SENATE'S DELIBERATIVE PROCESS.

Hours in Session Number of Votes



STATEMENT OF SENATOR TOM HARKIN
ON CLOTURE REFORM

Mr. Chairman, members of the Committee:

I am pleased to have this opportunity to address the issue of reforming Senate floor procedure. I believe we must develop procedures which recognize the important legacy of Senate tradition, and which maintain the unique role of the Senate in the American legislative process. At the same time, we must recognize the Senate's interest in preserving the respect of the American people for our institution, and the need for the Senate to be able to take decisive action on the important issues of the day.

These issues meet in the balance between the traditional right of any Senator to engage in extended debate, and the power to invoke cloture under Rule XXII of the Senate rules. Unfortunately, the use of the filibuster or the threat of filibuster has exploded in recent times. Since the cloture rule was introduced in 1918, we have gone from an average of less than two cloture votes per Congress prior to 1970, to nearly 37 per Congress since that time. In the 102nd Congress, some 48 cloture votes were required. This year, despite unified government for the first time in twelve years, the problem of gridlock is worse than ever. Last week, we had to file cloture on the nomination of an Assistant Secretary position. As I speak, cloture is expected to be filed on desperately needed campaign finance reform legislation, that the American people have demanded.

The abuse of the right to extended debate is clear. As the number of cloture votes has increased, so has the anger of the American people in the inability of the Congress to get things done. The majority is willing to make a decision, and live with the judgment of the nation on whether that decision is right or wrong. The minority insists on blocking the majority from making a final decision. The inability of the Senate to act decisively harms both the institution's reputation, and that national interest.

I support the right to extended debate. It is one of the great traditions of this body. I have occasionally voted against cloture, and I have worked against allowing certain expedited procedures in the Senate. However, I believe that debate should be used to persuade, and to bring issues into the public light -- not to delay or prevent a clear majority from taking action. We need a cloture rule that will respect this great tradition, but one which, in the end, allows the Senate to act. A Senator once said:

It is one thing to provide protection against majoritarian absolutism; it is another thing again to enable a vexatious or unreasoning minority to paralyze the Senate and America's legislative process along with it.

I wholeheartedly agree with this statement. I think it is as true a statement as Senator Dole has ever made on the Senate floor.

I would like to propose a variation of something that Senator Dole proposed when reform of the cloture rule was on the floor some years ago, when he made the statement I just quoted. It is also similar to a recent proposal of Norman Ornstein. I call it the ratchet. Under my proposal, the first cloture vote would be the same as it is today: it would require a vote of three-fifths of all Senators chosen and sworn -- with no vacancies in the Senate, sixty votes. If that vote failed, the next attempt at cloture, which could not take place until the second subsequent day in session, would require only fifty-seven votes. In each subsequent vote, the number of votes required would be reduced by three. Thus the third vote would require only fifty-four votes, and the fourth would require a simple majority of fifty-one votes.

My proposal would preserve the rights of the minority to use lengthy debate to bring their case to the American people, yet it would ensure that the majority, if they were sufficiently committed, could have the opportunity to have a vote on and pass legislation. If the minority is persuasive in their argument, or a compromise can be reached, by the fourth vote they might win over enough votes to carry their position. If not, they would have had an ample opportunity to state their case, in detail.

Let me comment on the argument that Lloyd Cutler made here last week. Cutler argues that the current supermajority cloture requirement is unconstitutional, essentially because a majority can be denied the opportunity to decide the particular issue before the Senate. This proposal would satisfy the constitutional challenge that Mr. Cutler suggests. Since the last vote would be by a simple majority, a majority of the Senate would ultimately decide the issue. Intermediate votes on closing debate would serve the vital interest of the Senate and the Nation in ensuring that issues receive a full, comprehensive airing in the Senate. I understand that Mr. Cutler was asked about the constitutionality of Norman Ornstein's proposal, and agreed that it would be Constitutional.

Mr. Chairman, I believe that this system strikes a fair, workable balance between prompt action and deliberation. I think the American people would agree.

The American people voted for change and an end to gridlock. The American people demand that the Senate take action to improve the economy, cut the deficit, and stop the squabbling. I can't think of any change we could make that would do more than to revise the cloture rule.

STATEMENT OF

THE HONORABLE STENY H. HOYER

MAY 25, 1993

JOINT COMMITTEE ON THE ORGANIZATION OF CONGRESS

Mr. Chairman and members of the committee, thank you for the opportunity to testify today. I have looked forward to appearing before the committee for some time, and am pleased to be here today. I want to commend each of you for the time and commitment you have given to the committee and I look forward to your final report.

Members of Congress share the public's desire that our governmental institutions work efficiently and effectively in terms of organization and structure. It is our responsibility as their Representatives to ensure that this happens. This should be a given — but it is not a goal unto itself. Ultimately our constituents expect us to do the business of government — meeting the needs of our people and setting a course for our country.

In recent years, attention has focused on issues of process as we have failed to enact substantive solutions to our nation's problems. Many have pointed to process as the reason for gridlock. I believe that analysis is basically incorrect.

Clearly, self-examination is appropriate in an institution like the Congress. Yet gridlock — the result of philosophical and partisan differences — has so frustrated the public that they are looking for process reform, when consensus creation and courage is what is needed.

This committee has an important role in rebuilding the public's faith in the institution and its ability to respond to the problems of the nation. But we will not rebuild public faith by process reform alone — we will be judged on tangible, positive results.

As the oldest institution in the House of Representatives — other than the speakership — the Democratic Caucus has often played a key role in reforming the operations and organization of the House.

As an aside, I would say to the committee that certain decisions are currently and appropriately in the purview of the party caucuses. Issues concerning seniority, leadership, committee assignment, and limitations are appropriately within the party caucus's discretion and should remain so. However, each party caucus has a responsibility to ensure such activities are in the best interests of the House as a whole.

The Democratic Caucus has historically responded to public concern about House structure and activities. The most recent cycle of reform started in the Caucus in the seventies, largely in response to the public's call for greater

accountability by our leaders and enhanced participation by their elected Representatives in their government.

In 1970, for the first time, Caucus proposals opened up floor amendment votes to public scrutiny. Throughout the decade, the Caucus reformed its internal operations in order to decrease the accumulation of power by chairman. It was also at this time that the Caucus divided committees into categories and set limits on the number of member's committee assignments.

In the late seventies and early eighties, in response to public concern about ethics in government, the Caucus changed its rules to ensure the continued integrity of its elected committee leadership. It was during this period that changes were made to the internal Caucus rules to require that any subcommittee chairman that was convicted or censured during the preceding Congress, would have to be approved by the full Caucus before resuming his or her subcommittee chairmanship. And further, any chairman who was indicted, convicted or censured, would immediately cease to exercise his or her power as chair.

It was in the last Congress that a Caucus initiative dating from the 70s was finally adopted. We professionalized the administrative operations of the House by giving the Speaker more control over elected House officers and establishing a professional administrator of non-legislative and financial services.

While there have been other important additions to House and Caucus rules since the early eighties, the reforms to Caucus and House procedure at the beginning of this Congress are the most sweeping adopted by the Congress in two decades. It is to these I now turn in some detail for I believe they have a direct relation to the work of this committee.

First and foremost, the House as an institution must respond to the challenges facing our nation. We proposed changes to better enable the Congress to do that and to respond to public criticism of a government — or as more widely perceived, the Congress — seemingly stuck in gridlock. The Caucus' proposals allowed members to better focus on their legislative priorities with fewer competing distractions. The Caucus proposals streamlined the committees and removed archaic and unnecessary impediments to action that were sometimes intentionally used for delay.

We adopted rules that provided for greater accountability for committee and subcommittee chairmen. Caucus rules were also clarified to allow for the removal of a committee chairman during a session of Congress.

We all have been frustrated by the increasing demands on our time. It seems one barely sits down to a hearing or at mark-up when one's schedule, the floor or a conflicting committee assignments forces us away and distracts us from our priorities.

The Caucus tried to address that frustration by streamlining operations and further limiting a Democratic member's committee assignments. The growing number of subcommittees over the last several years has frustrated members forced to be in too many places at once.

Therefore, the Caucus further limited the number of committee assignments of Democratic members, counting previously un-counted assignments such as ongoing committee task forces and select committees.

More importantly, the Caucus mandated a reduction in the number of subcommittees on most committees, resulting in the elimination of 14 subcommittees. As a result, most Congressional committees realigned subcommittee jurisdictions in a more comprehensive and even division. In addition, the Caucus also mandated reducing the maximum size of subcommittees. The result of these changes is to allow members to more efficiently focus their time and to streamline the size of the Congress.

Members have been increasingly frustrated by the amount of legislative language on appropriations conference report. Much of this language is forced upon the House in conference. The Caucus and the House both adopted rules at the beginning of this Congress to help address this problem and give House conferees additional ammunition to fight authorization legislation coming from the Senate. The House adopted a rule which gives the appropriate legislative committee a preferential motion to insist on disagreement with the amendment proposed by the Senate. Furthermore, under Caucus rules, the committee on appropriations is required to provide the chairman of the appropriate authorizing committees of House passed appropriations bills with numbered Senate amendments and the subsequent conference report.

These are some of the changes and problems that the Caucus has been concerned with over the years. Many of the recent reforms are just beginning to take effect but will hopefully have a marked impact on member's lives and their ability to focus their time and attention on the business of the people. I hope this committee will be able to address some issues which we did not.

The first issue is that of scheduling. There is no subject, I believe which more frustrates or concerns members. Unfortunately, almost every member has his or her own idea on how to fix it. I believe that the leadership has done a much better job this Congress in terms of making the schedule more firm and more "family friendly." But scheduling remains a major source of frustration.

Many members have talked about adopting the Senate plan of three weeks on and one week off. If you look at the calendar, however, you find that is now essentially the House schedule in that there is one district work period a month. I believe the problems, the committee conflicts and the feeling that you are simply dashing from place to place is mostly caused by the fact that we try and cram it all into a 2 and a half day Washington work week.

In my own personal view, any scheduling changes should start with the following 4 goals:

1. Time for the committees to do their business;
2. Predictability, as much as possible;
3. Even distribution of legislation on the floor so that all major legislation is not crammed in short, late night periods; and

4. Respect for families.

Most of these goals can be accomplished through a change of attitude and culture in the House without any rules changes. However, I believe the committee can be very helpful in making some comprehensive suggestions to improve scheduling in the House of Representatives. One option may be to give committees time to meet in the mornings and to start the House of Representatives later in the day, 12 noon, perhaps. The House would then work until 6 or 7 P.M., With members knowing votes can be expected to end for the day at that time.

However, this suggestion would also require a four day Washington work week. I believe it would not be necessary to have procedural or other votes in order to get members to committee hearings on Mondays.

Our committees and the members are frustrated with the current schedule. At the beginning of this Congress, the House deleted the rule which had prohibited committees from meeting when the House was in the committee of the whole, a rule which was frequently and easily waived. Other members, however, continue to be frustrated with floor interruptions while committees are meeting. To simply prohibit committees from meeting when the House is in the Committee of the Whole is impractical however, and unless other changes are made, will not give committees enough time to do their work.

Another item left unresolved is the issue of special orders. I fully respect and recognize the right and need for special orders. I do not, however, accept the right of one member to keep the House in session late into the night on an ad hoc basis. I am greatly encouraged that there is recognition of this on both sides of the aisle and we are working together to find a solution. Members on the Republican side have suggested a morning business hour. O.S.R. gave this idea a great deal of consideration. I believe this is an idea worth pursuing, if, we can also reach agreement on a reasonable adjournment time and can develop an agreement for organized debates.

There has been a great deal of discussion on organized "oxford-style" debates during special orders. I strongly favor developing this style of debate for the House, which might help bring real debate back to the House. Floor proceedings too often are marked by series of very short statements, largely unrelated to one another, and at the same time, repetitive in content. C-SPAN viewers often feel that we are talking by each other to score partisan points, not with each other, debating policy. Substantive analysis and discussion of policy alternatives, as occurred during the Desert Storm debate in January, 1991, will enhance the public's understanding of issues and elevate the level of debate, and hopefully, public opinion of the Congress.

Finally, it is my understanding that this committee is giving some consideration to suggesting an independent office for Congressional compliance with various civil rights laws. I believe this is an option that deserves serious consideration.

As the lead House co-sponsor of the Americans with Disabilities Act, I was deeply involved with developing language to cover the House of Representatives under that act. It was a move that I strongly supported. I believe that the Congress must fully comply with the letter of the law.

The goal of this committee must be to make the House and Senate work better. I am heartened that you are taking the time and devoting your energy — in serious bipartisan fashion — to figure out what the real problems and impediments to action are, and to recommend solutions.

This is an enormous task. No group of 535 members, no matter how dedicated and hardworking, will function with the efficiency and effectiveness we would desire. But that is the essence of our democracy.

No reform will be effected that does not have unintended consequences. So look closely, and proceed carefully. Do not let yourselves be distracted by politics parading as reform. Do not delude the public into thinking that our problems are all process-related.

The true problems are a lack of consensus and resolve to solve the problems of our nation. Yes, it is our responsibility to make sure that the Congress works. But it is our ultimate responsibility to make sure that the country works.

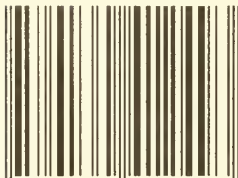


BOSTON PUBLIC LIBRARY



3 9999 05018 561 8

ISBN 0-16-041249-8



9 780160 412493

90000



